

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA126A/09
5039342

BETWEEN SANDRA FORD
 Applicant

AND METALLIC SWEEPING
 (1998) LIMITED
 Respondent

Member of Authority: Paul Montgomery

Representatives: Robert Thompson, Counsel for Applicant
 Owen Paulsen, Counsel for Respondent

Submissions received: 17 September 2009 from Respondent
 27 October 2009 from Applicant

Determination: 30 October 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] In determining the substantive matter, the Authority found for the respondent. Counsel for the respondent seeks costs on behalf of his client. Mr Thompson accepts costs may be appropriate in this case, yet urges the Authority to adhere to the tariff approach set out in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808 and to bear in mind the applicant's ability to pay.

Discussion

[2] This matter has had an almost labyrinthine progress to determination which has inflated costs incurred by both parties beyond the usual, given the uncomplicated matter involved. The history is simply that and is well known to the parties.

[3] Mr Paulsen submits his client has carried solicitor/client costs of \$30,610 plus GST and disbursements of \$211.21 inclusive of GST. He seeks a contribution of \$18,242 plus disbursements.

[4] As Mr Thompson submits, a number of invoices relate to matters predating the substantive investigation. However, the contribution sought appears to reflect the actual costs in relation to the Authority's involvement.

[5] Mr Thompson has forwarded information on the applicant's current financial position. Ms Ford has secured employment for 20 hours a week and has a school aged daughter to support. The applicant's financial situation is far from comfortable and the Authority is required to put this into the balance.

[6] The notification of the claim with the respondent beyond the 90 day limit occasioned additional costs in seeking leave and the applicant's decline of a *Calderbank* offer also need to be put into the balance.

[7] Mr Thompson submits, as counsel's costs submissions were outside the timetable, they ought to be struck-out. In the alternative, he says costs should lie where they fall. However, in the event of neither of these finding favour with the Authority, the principles set out in *PBO Ltd* (supra) should apply.

[8] Standing back from the intricacies and delays which muddy the water in this particular matter, I am of the view costs in the substantive matter need to follow the event.

[9] The investigation meeting took 1½ hearing days. Following the tariff approach in *PBO*, but for the financial circumstances of Ms Ford, I would have awarded costs to the respondent in the sum of \$4,500 plus disbursements. In the circumstances, I think it just to fix costs in favour of the respondent at \$1,500 and allow disbursements in the sum \$211.21 inclusive of GST.

[10] I encourage the representatives to discuss a method of payment which will ensure costs are paid yet without placing undue pressure on the applicant.

Paul Montgomery
Member of the Employment Relations Authority