

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2014] NZERA Christchurch 169  
5442837

BETWEEN IAN GABITES  
Applicant  
AND CARTER HOLT HARVEY  
LIMITED  
Respondent

Member of Authority: Helen Doyle  
Representatives: Gerard Praat, Counsel for Applicant  
Daniel Erickson, Counsel for Respondent  
Submissions Received: 9 October 2014 from Applicant  
17 October 2014 from Respondent  
Date of Determination: 29 October 2014

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**QUANTUM OF LOST WAGES AND COSTS DETERMINATION OF THE  
AUTHORITY**

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- A Carter Holt Harvey Limited is to pay Ian Gabites lost wages of \$5,484.42 gross less 20% contribution. That is the sum of \$4,387.54 gross.**
- B Carter Holt Harvey Limited is to pay Ian Gabites costs in the sum of \$3000 together with reimbursement of the filing fee of \$71.56.**

[1] In my determination dated 23 May 2014, I found that the applicant was entitled to reimbursement of three months' wages less any earnings received. There was insufficient information before me to determine the quantum of lost wages and I asked counsel to attempt, in the first instance, to reach agreement about lost wages, reserving the right for either party to return to the Authority if that did not prove possible.

[2] I also reserved the issue of costs and set a timetable in the event costs were not agreed that the applicant lodge and serve submissions as to costs by 4 June 2014 and the respondent by 18 June 2014. In submissions dated 6 October 2014 received by the Authority on 9 October 2014, Mr Praat advised that correspondence was entered into between the parties but no agreement was reached. The Authority was asked to grant leave to file submissions as to quantum and costs and after a response from the respondent, determine those matters.

[3] In the circumstances, the Authority granted leave and asked for submissions in reply by 23 October 2014. Mr Erickson duly lodged submissions on 17 October 2014 which addressed both the issues of the quantum of lost wages and costs.

### **Quantum**

[4] Quantum of reimbursement for lost wages for a three month period is agreed by counsel as the sum of \$5,484.42 gross. That amount is subject to a reduction of 20% for contribution.

[5] I order Carter Holt Harvey Limited to pay to Ian Gabites the sum of \$4,387.54 gross for lost wages.

### **Costs**

#### ***The applicant's submissions***

[6] Mr Praat, in his submissions, set out the actual costs incurred by the applicant to date, breaking them down into the initial attendance at the disciplinary meeting and correspondence, preparation for and attendance at mediation and preparation and attendance at the Authority's investigation meeting and incidentals.

[7] Mr Praat seeks two thirds of the actual costs associated with the investigation meeting being the sum of \$6,451.50 together with the filing fee disbursement of \$71.56. He submits that the applicant was successful, there was no behavioural conduct that caused the investigation meeting to be unduly lengthened or more complicated than necessary, costs sought are commensurate with the claim for unjustified dismissal, the number of witnesses called and the time taken for the hearing, the costs are not unreasonable and are in line with other costs awarded.

***The respondent's submissions***

[8] Mr Erickson in his submissions sets out that the respondent proposed on 29 May 2014 that an appropriate contribution towards costs by the respondent would be the sum of \$2,500 taking into account that the investigation meeting concluded just before 3pm. No response was received to that correspondence and the respondent duly withdrew its costs proposal in a letter dated 17 June 2014.

[9] Mr Erickson submits that the application for costs is four months outside of the timeframe set by the Authority with no explanation provided for the delay. He submits that the respondent's position is that leave should not be granted to the applicant to now apply for costs and refers the Authority to two previous Authority determinations in *Day v. Multi Media Services Ltd*<sup>1</sup> and *Maher v. Apex General Ltd*<sup>2</sup> where leave was not granted and no costs were awarded.

[10] Mr Erickson submits that the following factors weigh against an award of costs:

- (a) The length of the delay. The application is now over four months out of time;
- (b) There was no explanation provided for the delay;
- (c) The absence of an application for leave to extend the timeframe to seek costs prior to expiry;
- (d) The respondent acted reasonably by providing a proposal as to costs within the timeframe directed by the Authority and no response was received to the 29 May 2014 letter;
- (e) The respondent was reasonably entitled to assume that costs would not be sought and therefore withdrew its proposal.

[11] Mr Erickson submits alternatively that if the Authority does exercise its discretion in relation to costs, then the appropriate contribution would be \$2,500 on the basis of the daily tariff as the investigation meeting did not occupy a full day.

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<sup>1</sup> [2011] NZERA Auckland 432

<sup>2</sup> [2011] NZERA Auckland 372

## Determination

[12] I have considered the two Authority determinations Mr Erickson refers to. It is certainly important that timetables set by the Authority are adhered to and if there is some reason why they cannot be complied with, that leave is sought to vary the timetable before it expires. That did not occur in this case and the issue is what, if any consequence should flow.

[13] I find that there are some factors in this matter that distinguish it from the other determinations Mr Erickson refers to where cost submissions lodged outside of the timetable were not accepted and the successful party was deprived of a costs award. Firstly the consequence of failing to comply with the costs timetable was not set out clearly in the determination. I do not conclude that not accepting cost submissions lodged outside of the original and unvaried timetable is so established and well known it would not be necessary to do this. Given the possibility that a successful party would not be awarded costs fairness requires that this is clearly set out as it is in *Day*. Secondly there was also an issue of quantum outstanding between the parties that required discussion and ultimately an order from the Authority and it was sensible to deal with that at the same time as costs.

[14] The respondent very sensibly made an offer to resolve costs and then withdrew that offer because it says it was entitled to assume costs would not be sought. There was no suggestion of prejudice to the respondent because of that assumption.

[15] In all the above circumstances I intend to exercise my discretion as to costs and consider the submissions as to costs lodged out of the time for doing so.

[16] The recognised daily tariff in the Authority is \$3,500 and costs are properly I find to be assessed on that basis. As Mr Erickson correctly points out the matter did not take a full day although this matter was a personal grievance with six witnesses and the delivery of full submissions. In those circumstances, a reduction of \$1,000 is not warranted from the daily tariff. There was no conduct by the parties that would require adjustment otherwise to the tariff. I am of the view that a fair and appropriate award would be the sum of \$3,000 together with the filing fee of \$71.56.

[17] I order Carter Holt Harvey Limited to pay to Ian Gabites the sum of \$3,000 together with disbursements in the sum of \$71.56.

Helen Doyle  
Member of the Employment Relations Authority