

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2012] NZERA Christchurch 132
5349508

BETWEEN ROBERT GOMEZ
 Applicant

A N D SUB 5 PRIVATE SECURITY
 LIMITED
 Respondent

Member of Authority: M B Loftus

Representatives: Georgina Burness, Advocate for the Applicant
 Barry Kay on behalf of the Respondent

Submissions received: 27 June 2012 from the Applicant
 28 June 2012 from the Applicant

Date of Determination: 29 June 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 29 May 2012 I concluded that Mr Gomez had been unjustifiably dismissed by Sub 5 Private Security Limited.

[2] Costs were reserved and Mr Gomez, as the successful party, now seeks a contribution toward those he incurred. The application, tendered by his advocate, reads:

Costs to Applicant for Legal representation are requested of the Authority: [name, address and phone number of advocate].

21-Jun-12

Costs of 2500.00 for costs invoiced to the respondent Sub 5 Private Security Limited.

[3] It is well accepted that costs follow the event unless there is a compelling argument to the contrary. Normally the Authority will use a daily tariff approach when assessing the amount (refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*

[2005] ERNZ 808). The normal starting point is \$3,500 per day and from there, adjustment may be made depending on the circumstances.

[4] Whilst spread over two days due to my decision to hear from a witness called by neither party, the total hearing time was approximately half a day. Applying the above formula, that would mean an award of \$1750.

[5] Whilst a higher amount is sought, there is no supporting argument. The same can not be said in respect to a possible reduction. Mr Kay tendered a full submission.

[6] Just over half the submission expresses dissatisfaction with the result. There are other avenues through which that can be addressed and it does not influence a costs determination or justify a lower contribution. Mr Kay then argues:

- i. Mr Gomez could have saved his costs by representing himself as Sub 5 chose to do;
- ii. This is an opportunity for me to confirm views I expressed in the determination that Mr Gomez take some blame for what occurred (there was a reduction for contribution);
- iii. Sub 5 is under financial pressure as a result of having lost clientele to Christchurch's earthquakes;
- iv. There is no breakdown as to how the \$2,500 sought was incurred; and
- v. Various actions of Ms Burness extended the hearing time.

[7] The first two points do not sway me. Mr Gomez is entitled to representation of his choice and his conduct was addressed through the reduction in remedies.

[8] The other three points do, however, have some merit. A bland demand for an amount which exceeds the norm is inadequate and I agree that some actions of Ms Burness extended the hearing time, though not to a great extent. The argument with the greatest sway is the third and I can understand times being difficult for some businesses in Christchurch.

[9] Having considered the points made by Mr Kay I conclude a reduced contribution of \$1,000 to be appropriate.

Conclusion

[10] The respondent, Sub 5 Private Security Limited, is to pay the applicant, Mr Gomez, the sum of \$1,000 (one thousand dollars) as a contribution toward costs.

Mike Loftus
Member of the Employment Relations Authority