

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2012] NZERA Christchurch 201
5357980

BETWEEN GARY GOODMAN
 Applicant

A N D ROONEY EARTHMOVING
 LIMITED
 Respondent

Member of Authority: David Appleton

Representatives: Georgina Burness, Advocate for Applicant
 Roger Brown, Counsel for Respondent

Submissions Received 27 June 2012 from Respondent
 2 August 2012 from Applicant

Date of Determination: 18 September 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 25 May 2012 I found that Mr Goodman was unsuccessful in his personal grievance against the respondent and that the respondent was successful in its counterclaim against Mr Goodman. The respondent now seeks a contribution towards its legal costs from Mr Goodman.

[2] The investigation meeting took place over one and a half days in Timaru, the second day being occupied with hearing evidence from a witness in support of the counterclaim, who had not been available during the first day of the investigation. If he had been, the matter could have been concluded in one full day.

[3] There was nothing unusual in the way that the matter was conducted by either party and I see no reason why the usual principles of *PBO Limited v Da Cruz* [2005] 1 ERNZ 808 should not be followed. Therefore, as costs usually follow the event, Mr Goodman is liable to pay a contribution towards the respondent's legal costs.

[4] The respondent submits that the claim lodged by Mr Goodman was unmeritorious, but I do not agree that it had no merit. Whilst I found in favour of the respondent, there were serious issues to investigate, both in respect of Mr Goodman's claim and the counterclaim. Therefore, I do not believe that it would be just to award a higher contribution than is standard.

[5] The Authority now tends to award \$3,500 for a full day investigation, and I see no reason not to award such a sum in this case. Mr Goodman's advocate did ask that the award be ordered to be paid by him at the rate of \$20 a week. This would result in a payment period of over three years, which I do not find to be reasonable. The reason given for the request is that Mr Goodman's workplace has closed for winter. However, this costs determination is now being released after the winter season has ended, and so I assume Mr Goodman is in gainful employment again.

[6] More importantly, Mr Goodman's advocate did not lodge any financial information with the costs submission, and so I have no evidence at all of what ability Mr Goodman has to pay the sum. In the absence of that information, I cannot find any basis upon which to order payment of the costs by instalments. I therefore decline to do so.

[7] Mr Goodman's advocate also asked that I order that the sum awarded to the respondent in response to its successful counterclaim be paid in instalments of \$20 a week. That would take Mr Goodman nearly nine years to pay the sum off, which again is unreasonable. As no financial information was lodged, I am again unable to find any basis upon which to order payment of the \$9,310.48 by instalments, and so decline to do so.

[8] I order Mr Goodman to pay a contribution of \$3,500 towards the respondent's legal costs.

David Appleton
Member of the Employment Relations Authority