

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 17/09
5118960

BETWEEN H P HANNA & CO LIMITED
Applicant

AND PETER O'BOYLE
Respondent

Member of Authority: Helen Doyle

Representatives: Linda Penno, Counsel for Applicant
Peter O'Boyle in person

Submissions received: 8 December 2008 from Applicant
14 January 2009 from Respondent

Determination: 17 February 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 3 November 2008, I found in favour of the applicant that goodwill was payable by the respondent under a clause in his employment agreement. I dismissed the respondent's counterclaim. I reserved the issue of costs and have now received submissions from Ms Penno on behalf of the applicant and from the respondent.

[2] Ms Penno and Mr O'Boyle agree in their respective submissions that the approach to be taken by the Authority with respect to costs is set out in the Employment Court case of *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808.

[3] Ms Penno submits that the applicant's actual costs to the end of the investigation meeting amount to \$3,227.19 plus GST together with a filing fee incurred by the applicant of \$70. Ms Penno submits that the Authority should make an award of costs in favour of the applicant of \$3000 plus GST and the filing fee, taking into account the following:

- That the respondent is a commercially experienced individual with knowledge of goodwill.
- The respondent having earlier confirmed that he was not seeking to challenge the goodwill formula then said he would on the day of the investigation meeting.
- The defence, in terms of what the clause meant, was unmeritorious and contrary to the rules of interpretation.
- There were significant efforts by the applicant to resolve the situation prior to filing the claim.
- The claim was an important one for both parties.

[4] Mr O'Boyle submits:

- The applicant should bear its own costs because there was no view expressed at the time of his resignation about the application of the clause, the clause was not well drafted and there was no limit to the period for which goodwill should be payable.
- The decision is partly in favour of both parties, therefore, if there is any allocation of costs, it should be minimal.
- The clause was altered in the respondent's employment agreements after his resignation which supported his position that the clause was unclear.
- The investigation meeting was only of two hours duration and the costs claimed are excessive.

Determination

[5] The applicant was the successful party in this case. It is a well known principle that a successful party will usually be entitled to an award of costs in its favour unless there is good reason why such an order should not be made. There is no good reason in this case why an order for costs should not be made in favour of the applicant and I now assess what costs were reasonably incurred on its behalf.

[6] Awards in the Authority should be modest and are frequently judged against a notional daily basis. The Employment Court in *PBO Ltd* considered the Department of Labour figures for costs awards in the Employment Relations Authority for personal grievance cases for the first half of 2005. The figures showed that the majority of costs awards for that period were in the range of \$2,000-2,499 although recent cases have supported that the daily tariff has now been approved in a range up to \$3,000 – *Sefo v. Sealord Shellfish Ltd* (unreported, CC4B/08).

[7] This was not a personal grievance claim and therefore there was less factual complexity. There was some legal complexity. The meeting did not take a full day although that is not always indicative of the amount of preparation required. The Authority received written submissions from both parties after the investigation meeting and an allowance is made for time taken to complete those. In all the circumstances, I consider an appropriate starting point for costs is \$1,500.

[8] I accept that the applicant made many attempts to resolve the matter. The respondent's consistent position was that on his interpretation of the clause he was not required to pay any goodwill whatsoever. It was almost inevitable in those circumstances that there would have to be a determination on that matter.

[9] The respondent's counterclaim required addressing both in evidence and submissions. The counterclaim was not ultimately successful and there should be a modest adjustment upwards in that respect to the starting point for costs.

[10] The respondent said that the goodwill formula used by the applicant was not in issue. During the investigation meeting the respondent said that he did in fact take issue with the formula and how it was applied. That matter did not increase the time required for the investigation meeting but did require a response by Ms Penno in her submissions. I make a small adjustment upwards in that respect.

[11] When I take those matters into account, I am of the view that an appropriate award for costs in this matter is \$1,800 together with the filing fee of \$70.

[12] I order Peter O'Boyle to pay to H P Hanna & Co Limited the sum of \$1,870 being costs and disbursements.

Helen Doyle
Member of the Employment Relations Authority