

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2012] NZERA Christchurch 161
5362016

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| BETWEEN | IAN HUME Applicant | |
| A N D | PIEFECTION LIMITED Respondent | FOODS |

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|------------------------|---------------------------------------------------------------------|
| Member of Authority: | David Appleton |
| Representatives: | Robert Thompson, Advocate for Applicant Mr McEwan for Respondent |
| Submissions Received | 17 May 2012 from Applicant None received from Respondent |
| Date of Determination: | 3 August 2012 |

COSTS DETERMINATION OF THE AUTHORITY

[1] Mr Hume won his claim of unjustifiable dismissal against the respondent, which was recorded in the Authority's determination dated 4 April 2012. Adopting the usual principle that costs follow the event, Mr Hume seeks a contribution towards his legal costs.

[2] I reserved costs and invited memoranda to be served and lodged, the respondent having 28 days to reply to any memorandum served by Mr Hume's advocate. The memorandum on behalf of Mr Hume was lodged with the Authority on 17 May 2012 and a copy sent to Mr McEwan by email on the same date. Mr Hume's submissions on costs were delayed by the combined effect of the holiday and subsequent illness of his advocate, Mr Thompson. No submissions have been received from Mr McEwan and no explanation received by the Authority for the failure to provide any. I shall therefore determine costs on the basis of

Mr Thompson's submissions and my knowledge of how the case was conducted by the parties.

[3] Mr McEwan has lodged a challenge in the Employment Court to the Authority's determination. That does not, however, prevent the Authority from determining costs pursuant to paragraph 15 of Schedule 2 of the Employment Relations Act 2000.

[4] The submissions from Mr Thompson on behalf of Mr Hume raise the manner in which Mr McEwan defended the proceedings, which included failing to provide time and wages records, a drip feed approach to providing answers to the allegations, and threats of bringing an action of sexual misconduct against Mr Hume on behalf of female staff, which never materialised. Mr Thompson states that these actions caused extra time and costs to be spent.

[5] Mr Thompson does not quantify the extra costs which he says were incurred by the actions of the respondent, but states that costs prior to the investigation meeting amounted to \$3,750 plus GST, with a total sum of \$4,920 plus GST being incurred. He seeks \$2,500 towards Mr Hume's costs.

[6] The investigation meeting lasted half a day, and on the normal tariff principles, that would entitle Mr Hume, who was mainly successful in his claims, to a contribution of \$1,750 from the respondent. However, whilst Mr Thompson has not quantified what extra costs were incurred by the respondent's actions, nor identified his hourly rate, I am prepared to accept that the respondent's approach to the investigation process would have caused extra costs to have been incurred. I suspect, though, that those extra costs would have been relatively modest, and so I fix the contribution at \$2,000.

Order

[7] I order the respondent to pay to Mr Hume the sum of \$2,000 in respect of his legal costs incurred.

David Appleton
Member of the Employment Relations Authority