

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2012] NZERA Wellington 65  
5322923

BETWEEN	TONY HANKS Applicant
AND	CHOCOLATE THERAPY LIMITED First respondent
AND	THE SIMPSONS 2010 LIMITED Second Respondent

Member of Authority: P R Stapp  
Submissions received: 31 May 2012  
Determination: 5 June 2011

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Costs were reserved**

[1] The applicant has applied for costs against the second respondent only. The influences relied upon for a costs award are as follows:

- i. As a matter of principle.
- ii. Using the notional daily tariff as a starting point.
- iii. Any unnecessary behaviour that has added to the costs incurred by the other party.
- iv. The reasonableness of the level of contribution by the unsuccessful party.

- v. Personal service of documents. An affidavit (dated 17 February 2012) was produced that notified service had been achieved.
- vi. Consideration of the applicant's actual costs. The actual costs were file management and preparation \$5,120, attendance at the hearing \$805 and disbursements \$50. There were no invoices and receipts provided itemising the above.

[2] This matter has been dealt with on the papers. There has been time provided for a reply, from the second respondent, but nothing has been filed. I have therefore proceeded to determine the matter.

### **Issues**

[3] How much is the applicant entitled to from The Simpsons 2010 Limited for costs?

### **Determination**

[4] Mr Hanks was successful in his claim for the recovery of unpaid money from a record of settlement. The responsibility rested with The Simpsons 2010 Limited. The determination of a sum of costs is not to punish The Simpsons 2010 Limited.

[5] The Simpsons 2010 Limited was put on notice of the consequence of any non-payment at an early stage before the matter was filed in the Authority. As such the involvement of the Authority could have been avoided by The Simpsons 2010 Limited. Instead an application from Mr Hanks to the Authority was required so that he could get his money. The Simpsons 2010 Limited was solely responsible for the costs that the applicant has been put to. The relevant influences are:

- i. That The Simpsons Limited could have avoided the costs incurred by the applicant by paying the original sum owing. It had a chance to address the situation because it was put on early notice and its involvement in the record of settlement was abundantly clear.

- ii. That the applicant was entitled to be represented. This was entirely reasonable.
- iii. That there have been costs incurred by the applicant for representation, attendances, preparation and the personal service of documents. The latter was entirely reasonable because The Simpsons 2010 Limited was not represented and there was no attendance at the Authority's investigation meeting. There was no advance notice of any good cause for such non-attendance. There was a cheaper option available which was for the matter to be determined on the papers, but The Simpsons 2010 Limited deprived the applicant of that option.
- iv. That the applicant could not rely on mediation as an alternative to an investigation because of the behaviour of the Simpson's 2010 Limited. This meant that in considering meditation I concluded that it would not constructively contribute to resolving the employment relationship problem. In any case the matter involved the enforcement of a mediated record of settlement. As there had been a prima facie breach of the record of settlement and The Simpsons 2010 had done nothing to ameliorate the situation this meant that mediation was hardly likely to assist.
- v. That the applicant was reasonably entitled to assume that The Simpsons 2010 would be represented at the Authority's investigation meeting and to participate fully in the investigation, given the documents in reply.
- vi. That The Simpsons 2010 Limited raised a number of matters that had nothing to do with the rights and obligations set by the record of settlement that the whole matter hinged on. The matters raised by The Simpsons 2010 Limited attempted to blur and deflect the real issues.

[6] Costs follow the event for the successful party, which is Mr Hanks. There is nothing exceptional about the matter for me to depart from using the notional daily

tariff as the starting point. However the costs incurred by the applicant have been entirely unnecessary and caused by The Simpsons 2010 Limited.

[7] I have decided to increase the notional daily tariff to \$4,000 for Mr Hanks to get a contribution to his reasonable costs. This takes in to account the service of documents and any other expenses, except for the filing fee. I am not prepared to award full actual costs as there was nothing exceptional about the matter, which was a regular enforcement matter. Also I am not prepared to apply the method of calculating and assessing costs based on a trial when the Authority conducted an investigation. In addition Mr Hanks is entitled to the \$71.56 filing fee as a necessary expense. No other itemised details of expenses and costs have been provided for scrutiny and that could be separated from the inclusion in the daily tariff.

#### **Orders of the Authority**

[8] The Simpsons 2010 Limited is to pay Tony Hanks \$4,000 for costs and \$71.56 filing fee.

P R Stapp  
Member of the Employment Relations Authority