

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Russell Harris (Applicant)
AND Charter Trucks Limited (Respondent)
REPRESENTATIVES Robert Thompson, Advocate for Applicant
Philip James, Counsel for Respondent
SUBMISSIONS RECEIVED 24 March 2006
16 May 2006
MEMBER OF AUTHORITY Paul Montgomery
DATE OF DETERMINATION 24 May 2006

DETERMINATION OF THE AUTHORITY

The application for costs

[1] In a determination dated 22 March 2006, I dismissed the applicant's claims and reserved the issue of costs.

[2] Both representatives have duly provided submissions on the issue. Mr James seeks a contribution of two thirds of total solicitor/client costs of \$6,000. Mr Thompson, while urging the Authority to allow costs to lie where they fall, also submits in the alternative that given his client's continuing unemployment and the relative brevity of both the interim and substantive proceedings, any award needs to be at the lower end of the scale.

Discussion

[3] For the respondent, Mr James says his client has incurred *very substantial costs* and that the allegations of the applicant required his client to go through mediation, an interim application for reinstatement and a defended investigation meeting. Mr James referred the Authority to several leading cases including *Victoria University of Wellington v Alton-Lee* [2001] ERNZ 305; *Reid v NZ Fire Service Commission* [1995] 2ERNZ 38; *Good Health Wanganui v Burberry* WC2/03 (unreported); and *Binney v Pacific Health Ltd* CA65/02.

[4] In his submission, Mr Thompson for the applicant submits that the respondent's claim is not detailed and that the applicant is not responsible for costs associated with mediation. Mr Thompson also refers to the relatively short time taken in each of the investigations pointing out that each party called only one witness.

The legal principles

[5] An award of costs in the Authority is discretionary and in the normal course of events, costs will follow the event.

[6] The recent decision of the Full Employment Court in *PBO Ltd v Da Cruz* AC2A/05, sets out the relevant principles in a costs setting. In that decision, the Full Court approved of a tariff-based assessment of costs provided that the Authority did not slavishly apply the principles.

[7] The notional daily rate would apportion a figure, given the most recent information available, of somewhere between \$2,000 and \$2,500 for a simple matter of this kind. The interim application meeting and the substantive meeting took under five hours and involved only the applicant and the managing director of the respondent company. Complex legal or factual issues were not involved in the resolution of this matter.

Determination

[8] Bearing in mind the factors put before me by both representatives, I decline costs to lie where they fall.

[9] I direct the applicant to pay the respondent the sum of \$1,250 as a contribution to its reasonably incurred costs.

Paul Montgomery
Member of Employment Relations Authority