

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 321A/09
5164540

BETWEEN DENNIS KAVANAGH
Applicant
AND ASCOT ALUMINIUM
LIMITED
Respondent

Member of Authority: Dzintra King
Submissions received: 1 October 2009 and 14 October 2009 from Applicant
14 October 2009 from Respondent
Determination: 17 November 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] The applicant, Mr Dennis Kavanagh, was successful in his personal grievance claim and his claims regarding payment of holiday pay and wages. The parties have been unable to agree costs. The applicant now seeks costs. The applicant has incurred legal costs of \$14,195 (excluding GST). The applicant seeks \$9,000 being \$3,000 per day plus two days of preparation time. The applicant seeks an additional \$3,600 in relation to the breach of statute claims citing the Court of Appeal in *Bradbury v Westpac Banking Corporation* [2009] NZCA 234. Disbursements of \$110 are sought.

[2] The criteria for awards of costs are set out in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808. These include the use of a notional daily tariff in the calculation of Authority costs. The application of this will depend upon discretionary factors: *Cliff v Air New Zealand Ltd*, unreported, 17 November 2006, Shaw J, AC 47/06. The tariff is in the vicinity of \$3,000.

[3] Costs are not to be used as a punishment or as an expression of disapproval. If an unsuccessful party's conduct has increased costs unnecessarily then that can be taken into account in inflating or reducing an award.

[4] The costs sought to be recovered amount of 89% of the applicant's total costs. This is a very high percentage.

[5] The respondent says an award of \$3,500 is fair in the circumstances.

[6] I intend to apply the principles in *PBO* (supra) and not award indemnity cost for any part of the proceedings.

[7] The respondent is to pay the applicant the sum of \$4,000 in costs and \$110 in disbursements, which includes the \$70 filing fee.

Dzintra King

Member of the Employment Relations Authority