

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2013] NZERA Christchurch 213
5390875

BETWEEN SHANE KENNINGTON
Applicant
AND CANTERBURY SAILPLANES
LIMITED
Respondent

Member of Authority: David Appleton
Representatives: Murray Withers, Counsel for Applicant
Peter Zwart, Advocate for Respondent
Submissions Received: 17 September 2013 from the respondent
4 October 2013 from the applicant
Date of Determination: 11 October 2013

DETERMINATION OF THE AUTHORITY

[1] By way of the Authority's determination dated 5 August 2013, Mr Kennington failed in his personal grievance of unjustified dismissal. The parties were invited to agree how costs should be dealt with between them, but have been unable to do so. Accordingly, the respondent has submitted a memorandum to the Authority seeking a contribution of \$3,500 towards its legal costs.

[2] Mr Kennington resists this, but does not state what level of costs he considers would be appropriate, other than that any cost award should be minimal.

[3] Mr Zwart, for the respondent, refers me to the seminal case of *PBO Ltd. v Da Cruz* [2005] 1 ERNZ 808 which sets out the costs principles that apply in the Authority. These principles include that costs generally follow the event, awards should be modest, costs frequently are judged against a notional daily rate and that the nature of the case can also influence costs.

[4] Mr Withers, for Mr Kennington, makes points about the ownership and running of the respondent company that I am not convinced are relevant to the issue of costs, as they essentially repeat points raised during and relevant to the substantive investigation. He also states that the respondent did not provide a formal contract to the employee, and that *these breaches* mean that any costs award should be minimal. However, *Da Cruz* makes clear that the award of costs is not to be used as a punishment. This principle applies equally to not punishing the successful party by unreasonably reducing costs, as to the unsuccessful party by unreasonably increasing them.

[5] Mr Zwart states that the time taken by the investigation was over one half day. I disagree, and note that it lasted between 09.30 and 12.15. Two hours 45 minutes does not constitute more than one half day. I also note that Mr Zwart does not disclose what costs have been incurred by his client, which makes it impossible for me to assess whether those costs have been reasonably incurred or not. However, I have seen, to some extent, the amount of work that was carried out by Mr Zwart on behalf of the respondent and I am satisfied that it would have incurred costs of at least the \$3,500 sought.

[6] I believe that this is a case where a modest cost award should be made against Mr Kennington and, using the standard notional daily rate of \$3,500 as a guide, award the sum of \$1,500 as a contribution towards the respondent's costs.

Order

[7] Mr Kennington is to pay a contribution towards the respondent's legal costs in the sum of \$1,500.

David Appleton
Member of the Employment Relations Authority