

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2012] NZERA Christchurch 145
5353153

BETWEEN

NATHAN KENTISH
Applicant

A N D

D C M ROOFING LIMITED
Respondent

Member of Authority: David Appleton

Representatives: Georgina Burness, Advocate for Applicant
John Brandts-Giesen, Counsel for Respondent

Submissions Received 5 July 2012 from the applicant;
9 July 2012 from the respondent.

Date of Determination: 16 July 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 25 June 2012, the Authority found that the applicant succeeded with his claim of unjustifiable dismissal. He did not succeed in his claims for unjustifiable disadvantage although the respondent conceded that the applicant had been underpaid in respect of the first week of his ACC compensation.

[2] Mr Kentish seeks \$1,750 towards his costs, together with \$71.56 filing fee. The respondent argues that the applicant's costs should be reduced by half, because of the applicant's contribution to his dismissal that I found merited a 50% reduction in his remedies. The respondent also argues that the applicant sought to adduce evidence that should have been adduced at the investigation meeting, and that the tardiness of that evidence caused difficulties for the respondent and its lawyer and the incurring of further legal costs.

[3] There is no reason to depart from the principles of *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808 when considering the award of costs in this

matter. The subject matter of the claims was not legally or factually complex. Costs should follow the event, and so the respondent should pay a contribution to the applicant's costs.

[4] The investigation meeting lasted half a day, and in accordance with the current daily tariff approach, that would entitle Mr Kentish to the exact sum claimed. I do not agree with the respondent that the finding of contribution should sound in the award of costs. They are two separate matters and the applicant's contribution did not impact upon the way that the investigation was conducted or how long it took.

[5] In respect of the late production of evidence, this was called for by the Authority, and was in part due to Mr Kentish not being asked the same questions by the respondent about his income after his dismissal as his partner was asked. In any event, counsel for the respondent does not particularise what difficulties were caused by the additional evidence being adduced, and it was by no means extensive or particularly late in any event. It is hard to envisage what difficulties it caused, other than seeking brief instructions from the respondent for comments.

[6] Taking these matters into account, I order the respondent to pay to the applicant the sum of \$1,750 in respect of his costs, together with the further sum of \$71.56 in respect of the applicant's filing fee.

[7] I agree with the respondent that the additional sum of \$70 referred to by the applicant's representative in her submissions dated 3 July 2012 falls outside the jurisdiction of this costs determination.

David Appleton
Member of the Employment Relations Authority