

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 125
5470896

BETWEEN ANTHONY and IRENE KIDD
Applicants

A N D GAIL ELIZABETH
BEAUMONT and ROY
BEAUMONT
First Respondents

A N D GAIL ELIZABETH
BEAUMONT and ROY
BEAUMONT and DIPROSE
MILLER TRUSTEES
LIMITED as TRUSTEES OF
THE BEAUMONT FAMILY
TRUST
Second Respondents

Member of Authority: T G Tetitaha

Representatives: W Reid, Advocate for Applicants
G Beaumont, Respondent Representative

Investigation Meeting: On the papers

Submissions Received: 8 April 2016 from Applicants
1 April 2016 from Respondents

Date of Determination: 26 April 2016

COSTS DETERMINATION OF THE AUTHORITY

A. I decline to make any award of costs. The parties shall each meet their own costs.

Employment Relationship Problem

[1] The Authority in its substantive determination dated 29 February 2016¹ dismissed the applicants' personal grievance application. Costs were reserved.

[2] The respondents now apply for costs. They seek "compensation" of \$340,000.

¹ *Anthony Kidd & Anor v Gail Elizabeth Beaumont & Ors* [2016] NZERA Auckland 64.

Costs

[3] The Authority has the power to order a party pay to another party costs and expenses as it thinks reasonable.² Costs awards are generally intended to meet the reasonable legal costs and expenses (including witness expenses) incurred by a successful party before the Authority.

[4] Costs are not a mechanism to seek compensation - they are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct.³ For those reasons I decline to order costs for the respondents' lost business (\$50,000) and alleged stress, hurt and humiliation (\$260,000).

What is the starting point for assessing costs?

[5] The correct approach to assessing costs is for the Authority to use its notional daily tariff⁴ which sets a costs recovery amount per hearing day. The current daily tariff is \$3,500 per hearing day. This matter involved a two day investigation meeting. The starting point for assessing costs would have been \$7,000 subject to an assessment of the actual and reasonable costs incurred.

What costs were actually and reasonably incurred?

[6] The respondents were self-represented at hearing. There is a general rule that self-represented parties are not entitled to costs.⁵

[7] The respondents did engage a solicitor to draft their statement in reply and appear at the initial teleconference. However it appeared from the respondents' submissions the professional relationship with their solicitor broke down thereafter. I am uncertain if they paid for any legal advice as a consequence. They refer to legal fees of \$10,152.00, but have not provided copies of any invoices despite a request from the Registry support officer that they do so. I would have been prepared to make an award for their legal fees for preparation of the statement in reply and appearing at the teleconference of \$1,000.

² Clause 15 Schedule 2 Employment Relations Act 2000.

³ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808 (EmpC) at [35].

⁴ *Mattingly v Strata Title Management Ltd* [2014] NZEMPC 15 at [16]; also see above n3.

⁵ *Re Collier (A Bankrupt)* [1996] 2 NZLR 438 (CA).

[8] Fees for preparation and attendance at mediation (\$600) are sought. These appear to be for the respondents' own time. There is no basis to order costs for self-represented litigants.

[9] They seek recovery of a disbursement for accountants' fees of \$12,171.00 without production of an invoice. Their accountant did not appear at hearing to give expert evidence nor produced any evidence for hearing except for a copy of the Beaumont Family Trust Deed. The fees sought bear no relation to their accountant's input into the hearing. I would have made a modest award of \$150 for their involvement if invoices had been produced.

[10] The respondents seek 42 hours preparation (\$2,850) for what I assume is their own time. I decline to make any award.

[11] They also claim for lost time for 6 people to attend a hearing (\$2,400). This appears to include time for the respondents to attend. This again is an amount that is not recoverable. The remaining witnesses expenses were not been itemised. None of the respondent witnesses were experts justifying the incurrence of a professional fee for their time. I had understood several witnesses were also retired.

[12] There is no basis for the respondents to seek \$550 for travel and mileage to Tauranga for two days hearing time. This is especially when they and some of their witnesses live within 20 kms of Tauranga. One witness (Beverley Gourley) gave evidence by telephone. The travel and mileage sought is excessive and unreasonable.

[13] A disbursement of \$1,277.00 for "miscellaneous office supplies and all incidentals" likewise seems unreasonable given the evidence the respondents filed and produced. Only the applicant produced a bound bundle of documents. No supporting invoices have been produced justifying this cost.

[14] I decline to make any award of costs. The parties shall each meet their own costs.

TG Tetitaha
Member of the Employment Relations Authority