

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2013] NZERA Christchurch 218
5405424

BETWEEN CRAIG KIRKPATRICK AND
FOUR OTHERS
First Applicants
THE NEW ZEALAND MEAT
WORKERS AND RELATED
TRADES UNION
INCORPORATED
Second Applicant
A N D RAVENSDOWN FERTILISER
CO OPERATIVE LIMITED
Respondent

Member of Authority: David Appleton

Representatives: Karina Coulston, Counsel, for the Applicants
Scott Wilson, Counsel, for the Respondent

Submissions received 9 October 2013 from the respondent
15 October 2013 from the applicants

Date of Determination: 22 October 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] By way of a determination dated 18 September 2013, I dismissed the applications of the applicants. I reserved costs, and invited the parties to seek to agree how costs were to be dealt with between them. They have been unable to do so.

[2] The respondent has lodged a memorandum of counsel and seeks a contribution to its costs in the sum of \$6,500. This is resisted by the applicants, who submit though their counsel that there is no basis for the Authority to depart from the accepted daily tariff of \$3,500.

[3] Both parties refer me to the case of *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808 which discussed the principles to be adopted by the Authority when considering costs. These are:

- a. There is discretion as to whether costs would be awarded, and in what amount.
- b. The discretion is to be exercised in accordance with principle and not arbitrarily.
- c. The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority.
- d. Equity and good conscience is to be considered on a case by case basis.
- e. Costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.
- f. It is open to the Authority to consider whether all or any of the parties' costs were unnecessary or unreasonable.
- g. That costs generally follow the event.
- h. That without prejudice offers can be taken into account.
- i. That awards will be modest.
- j. That frequently costs are judged against a notional daily rate.
- k. The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[4] First, I accept that there is no reason to depart from the usual principle that costs follow the event. Although counsel for the applicants submits that the matter was akin to a test case, it was fact specific and not, therefore, particularly of wider interest. Indeed, it could not even be said to have been relevant to workers throughout the company, as different conditions apply in the North Island within the company relating to the pay of workers who change rosters.

[5] The respondent states that the solicitor/client costs incurred by the respondent in defending the matter are \$22,162.90 exclusive of GST. The applicants submit that

these costs have not been reasonably incurred and compare their own costs of \$11,304.35 exclusive of GST.

[6] The respondents attribute their elevated costs to the nature and complexity of the case. However, although there were five applicants, their evidence was largely the same in material matters. There was not a great deal of documentation, the bulk consisting of two collective agreements. There were some relatively intricate legal arguments to consider from both parties, and counsel for both parties made very helpful submissions, but these legal arguments did not fall particularly far outside of the expected scope of what was essentially an exercise in contractual interpretation.

[7] I am unable to conclude that the respondent's costs were unreasonable, as I was not shown a breakdown of the chargeable activities undertaken by counsel for the respondent. However, I do not accept that there was anything in the case that justifies a departure from the usual daily tariff. This is especially so given that the investigation lasted less than a whole day.

[8] Therefore, in keeping with the general principle that costs should be modest, I determine that the applicants should make a contribution to the costs of the respondent in the sum of \$3,500. No representations have been made as to how the costs should be shared between the applicants. However, in the knowledge that the union supported the personal grievances of the first applicants, I shall order that the second applicant bears the costs.

Order

[9] I order the second applicant to pay to the respondent the sum of \$3,500 as a contribution to its costs.

David Appleton
Member of the Employment Relations Authority