



### **Applicant's Costs Submissions Summarised**

[3] In costs submissions received on 21 January and 11 February 2010 Mr Kirkwood seeks costs of \$3,000 as a contribution to his actual costs of \$8,500.

[4] Reliance is placed in observations by the Authority at par 63 of the substantive determination that a costs contribution should reflect the less than co-operative approach to the investigation by the respondent that resulted in a number of additional but unnecessary attendances by counsel for Mr Kirkwood.

[5] Those attendances included application to the Authority for a directions conferences due to the respondent's delay in the mediation process and refusal to cooperate with a reasonable request for disclosure of documents, and responses to applications by the respondent for adjournments of the investigation that were ultimately rejected.

[6] Mr Kirkwood was successful in his claim and costs should follow the event.

### **The Company's Position Summarised**

[7] I set aside as irrelevant submissions put by counsel for the Company, Mr John Gwilliam, in submissions received on 8 February that effectively relitigate the Authority's earlier refusal to adjourn the substantive investigation: the Authority's reasons for refusing the adjournment request were set out at length in par 16 of the substantive determination. No fresh argument has been advanced to warrant revisiting that decision.

[8] The Company says that, while costs normally follow the event, in this case they should be limited to the interlocutory matters and not the hearing itself as there was no opportunity for the respondent to present its case.

[9] The applicant should take some responsibility for the difficulties imposed on the respondent, as he knew the private addresses of the directors and communications could have been forwarded to the directors directly (rather than through its registered office where material reportedly sent there by the applicant has still not been located).

[10] If costs are awarded they should be nominal so as to reflect the respondent's earlier difficulties when it elected to dispense with the services of its previous lawyer.

### **Discussion and Findings**

[11] The Authority's discretion with which to award costs is now well settled and typically follows the event: *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.

[12] I accept Mr Watson's submissions, on behalf of Mr Kirkwood, that to place responsibility on his client for the respondent's own delays is not fair (my words) and that the other submissions on behalf of the Company also lack merit.

[13] I am satisfied that, in all the circumstances, and while running for only half a day, a costs award of \$3,000 against the Company is entirely appropriate.

### **Determination**

[14] The Company is to pay to Mr Kirkwood as a contribution to his fair and reasonable costs \$3,000 (three thousand dollars).

**Denis Asher**

**Member of the Employment Relations Authority**