

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 153A/09
5133704

BETWEEN Jon Knight
 Applicant

AND Offshore Marine Services (NZ)
 Limited
 Respondent

Member of Authority: Denis Asher

Representatives: Barry Henderson for Mr Knight
 John Spurway for the Company

Submissions received: By 7 December 2009

Determination: 18 December 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 16 October 2009 (WA 153/09) I found against Mr Knight's claim that he had been unjustifiably dismissed.

[2] Costs were reserved.

Company's Costs Submissions Summarised

[3] In costs submissions received on 19 November and 7 December 2009 the Company seeks costs of \$8,982.78 being costs of representation (\$4,264.00) and airfares for the Australian-based dismissal decision maker (NZ\$4,718.78).

The Applicant's Position Summarised

[4] In submissions made on Mr Knight's behalf and received on 3 December, Mr Henderson said his client did not have the ability to pay costs due to his unemployment, family commitments, no disposable income and debts. Because of his client's financial situation, Mr Henderson anticipates his own costs will be written off.

[5] The Company's claim for disbursements is unacceptable in that it ought to have utilised video conferencing rather than flying an employee all the way from Perth.

[6] Because of the unusual nature of the grievance costs should lie where they fall.

Findings

[7] 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.

[8] No further evidence has been provided in respect of the claims about Mr Knight's financial circumstances. However, during the investigation, the applicant confirmed he had been largely without employment and was currently in receipt of ACC.

[9] It was not a lengthy investigation and some of the time was spent by the parties attempting to settle matters on their own terms.

[10] Having regard to the above and the conventional nature of this investigation, and consistent with the observation I made about costs in my substantive

investigation, I remain satisfied that a total costs award of \$1,500 for the investigation is appropriate in all the circumstances.

Determination

[11] Mr Knight is to pay to the Company as a contribution to its fair and reasonable costs \$1,500 (one thousand five hundred dollars). It may be necessary for the parties to reach agreement on a suitable 'drip feed' repayment of this sum.

Denis Asher

Member of the Employment Relations Authority