

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 332
3022864

BETWEEN WILLIAM LANG
 Applicant

AND AIR NEW ZEALAND
 LIMITED
 Respondent

Member of Authority: Jenni-Maree Trotman

Representatives: Marcus Khal, for the Applicant
 Kevin Thompson, for the Respondent

Investigation Meeting: Determined on the papers

Additional documents
received: None from the Applicant
 11 September from the Respondent

Determination: 30 October 2018

COST DETERMINATION OF THE AUTHORITY

- A. The Applicant is ordered to pay to the Respondent a sum of \$3,500 towards its legal costs.**
- B. Payment of the sum of \$3,500 is to be paid within 14 days of the date of this determination.**

Employment Relationship Problem

[1] On 3 September 2018 I issued a determination in which I found that Mr Lang's grievances were not raised within the statutory 90 day time period, he had not established the existence of exceptional circumstances so as to warrant leave being granted to raise a personal grievance out of time, and that his breach of contract claims were also statute barred.

[2] Costs were reserved, with the parties encouraged to resolve that issue themselves. In the event that they could not, I set a timetable for submissions.

[3] The parties' attempts to resolve the issue of costs have been unsuccessful. Accordingly, on 11 September 2018, Air New Zealand Limited (Air NZ) filed submissions applying for costs. By email dated 27 September 2018 Mr Lang's representative advised the Authority that he did not intend to respond to Air NZ's application for costs.

Authority's Approach to Costs

[4] The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority considers reasonable.¹ The principles applying to costs are well settled and do not require repeating.²

[5] An assessment of costs will normally start with the notional daily tariff. The Authority's normal daily tariff is \$4,500.00 for the first day of an investigation meeting. For each subsequent day of an investigation meeting the Authority's normal daily tariff is \$3,500.00³. The tariff is then adjusted upwards or downwards depending on the particular circumstances of the case.

Application for costs

[6] Air NZ claims costs in the sum of \$3,500. A breakdown of time was produced by Air NZ that detailed the work undertaken by its legal representative and the amount it was charged. The amount charged was more than double the sum claimed by Air NZ even after deduction of attendances relating to mediation.

[7] For the reasons that will become apparent, I am satisfied that it is appropriate to order Mr Lang to make a contribution towards Air NZ's legal costs in the sum that it claims. This sum is reasonable in all of the circumstances and is less than the ordinary daily tariff that would otherwise have been awarded.

[8] The Statement of Problem alleged a range of matters including unjustified dismissal, unjustified constructive dismissal, unjustified disadvantage, breach of good

¹ Employment Relations Act 2000, Schedule 2 clause 14.

² *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].

³ Practice Note 2, Costs in the Employment Relations Authority.

faith and breach of contract. While the range of claims was not unusual, there were additional matters that added to the seriousness and complexity of the case. These included the remedies sought by Mr Lang which were approximately \$2.5 million. In addition, the events that gave rise to the claims were wide ranging and dated back to the early 1990's.

[9] The breadth of the issues raised, and the historic nature of the claims, required Air NZ to spend considerable time on this case. Air NZ's representative was required to meet with two of Mr Lang's managers, who were relevant at different material times, as well as Air NZ's Chief Medical Officer to address medical issues raised by Mr Lang in relation to his claim that exceptional circumstances existed. In addition, he was required to review historical documentation in order to provide the Authority with the relevant background context and to assist his client with preparation of their affidavit evidence.

[10] Three reasonably substantial affidavits were filed on behalf of Air NZ. Mr Lang filed one substantive affidavit and three reply affidavits. Both parties filed lengthy submissions.

[11] Air NZ has been put to the expense of filing submissions applying for legal costs.

Determination

[12] Mr Lang is ordered to pay to Air NZ the sum of \$3,500 towards its legal costs. This sum must be paid within 14 days of the date of this determination.

Jenni-Maree Trotman
Member of the Employment Relations Authority