

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 19A/10  
5149977

BETWEEN                      DALLAS LEEVEY  
   Applicant  
  
AND                                NEWMARKET GUARD  
   SERVICES LIMITED  
   Respondent

Member of Authority:        Alastair Dumbleton

Costs submissions:            29 January and 26 February 2010

Determination:                21 July 2010

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] Further to the Authority's determination issued on 19 January 2010 under AA19/10 an application for costs has been received from the respondent Newmarket Guard Services Limited.

[2] The company seeks what appears from the copies of invoices supplied to the Authority to be an order requiring all of its costs, in total \$9,136.47 (including GST), to be reimbursed by the applicant Mr Dallas Leevey.

[3] Mr Leevey opposes the application and, with some supporting documentary information, submits that any award of costs will increase significant financial hardship he is experiencing.

[4] The Authority determined from its investigation that Mr Leevey's dismissal was justifiable, applying the test at s 103A of the Employment Relations Act 2000. Further, it determined that the suspension of Mr Leevey prior to dismissal did not give

rise to a personal grievance. As to his claim that he had been short paid holiday pay, the Authority also held against Mr Leevey.

[5] Consistently with the approach of the Employment Court and civil courts generally, only in exceptional cases will the Authority make an award of full costs, or award costs on an indemnity basis. No reasons have been put forward at all for the claim to recover full costs in this case, and I am unable to see anything exceptional about the case or the way the investigation was conducted with the parties to support such an award.

[6] The respondent company is entitled to a reasonable contribution towards its actual costs.

[7] *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808, sets out the principles to be applied by the Authority in exercising its costs discretion.

[8] In view of the criticisms expressed by the Authority in the last few paragraphs of its determination about the conduct of the respondent company, I have reflected on the principle in *Da Cruz* that costs are not to be used as a punishment or as an expression of disapproval about a party's conduct. However, as stated by the Court in its decision, conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award.

[9] I further note from *Da Cruz* the principles that awards of costs will be modest and that frequently costs are judged against a notional daily rate.

[10] I note that the particular invoice for \$1,991.25 (including GST) dated 14 April 2009, seems to relate mainly to professional services in respect of the mediation the parties were required to attend. In principle therefore that amount cannot be considered.

[11] I accept from the information supplied that Mr Leevey is experiencing financial hardship and some allowance ought justly to be made for that in exercising the Authority's discretion. The case was a relatively straightforward one and the notional daily rate is an appropriate place to start.

[12] For a case of this kind \$2,500 is well within the boundaries of a notional daily rate. Making some allowance for financial hardship, I consider that \$1,850 is a

reasonable contribution. Accordingly, Mr Dallas Leevey is ordered to pay Newmarket Guard Services Limited \$1,850 costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

A Dumbleton  
**Member of the Employment Relations Authority**