

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2012] NZERA Christchurch 26  
5342818

BETWEEN                      FRANCOIS                      EMMANUEL  
   LEURQUIN  
   Applicant  
  
A N D                              DUNEDIN CITY COUNCIL  
   Respondent

Member of Authority:        David Appleton

Representatives:              Jenny Beck, Counsel for Applicant  
   Lesley Brook, Counsel for Respondent

Submissions Received:        30 January 2012 from the Applicant  
   13 February 2012 from the Respondent

Date of Determination:        16 February 2012

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     In a determination dated 16 January 2012 the Authority found that the Applicant's personal grievances for unjustified dismissal and unjustified disadvantage had been made out. Costs were reserved and the parties were invited to make written submissions in relation thereto. The applicant, who is in receipt of legal aid, claims his costs and submits that actual costs be awarded. The respondent argues that a contribution of \$5,000 should be made to the applicant's costs.

[2]     The investigation meeting took place over two days, on 5 and 6 December 2011. Counsel for the applicant argues that actual costs should be awarded on the basis that, inter alia, the respondent produced a large number of witnesses, as opposed to the applicant. The respondent produced seven briefs of evidence and six witnesses appeared before the Authority (one witness being too unwell to appear). The applicant alone gave evidence. In my view, none of the witnesses for the respondent were unnecessary and all the evidence adduced was potentially of assistance in the investigation. Counsel for both parties dealt with all witnesses in a professional and

efficient way. It is usual that a respondent will rely on more witnesses than an applicant, and I do not believe that the approach of the respondent in this respect merits the award of more than the usual daily tariff.

[3] Counsel for the applicant also argues that a higher daily tariff is appropriate in reliance on the case of *Carter Holt Harvey Ltd v Eastern Bays Independent Industrial Workers Union* [2011] NZ EmpC 13, where a daily tariff of \$5,000 was considered appropriate as the case was complex, involving extensive documentation. I do not agree with the implication of this submission that the present case was either complex, or involved extensive documentation. The case was relatively straightforward, involving well tested principles of law and practice. The documentation was by no means extensive. Therefore, I reject this argument as a basis for increasing the daily tariff.

[4] Counsel for the respondent submits that there were no unusual features to the case which would warrant an increase in the usual award of costs. I agree with that submission. Counsel for the respondent also submits that the respondent's contribution to the applicant's legal costs should be \$5,000 and refers to the success of their argument that there should be a reduction in compensation because of the applicant's blameworthy contribution to his dismissal. Despite this success by the respondent, I do not consider that it merits a reduction in the daily tariff payable in view of the overall findings.

[5] Applying the usual principles of *PBO Ltd v Da Cruz*, [2005] 1 ERNZ 808, and especially the principles that awards will be modest and frequently costs are judged against a notional daily rate, I fix the award of costs at \$6,000.

David Appleton  
Member of the Employment Relations Authority