

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Labana Moe (Applicant)
AND Mt Roskill Panelbeaters & Spraypainters (Respondent)
REPRESENTATIVES Francis Sabbineni for Applicant
Jo Douglas for Respondent
MEMBER OF AUTHORITY Marija Urlich
INVESTIGATION MEETING 18/07/2006
SUBMISSIONS RECEIVED 16/08/2006 from respondent
DATE OF DETERMINATION 10 October 2006

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] In a determination dated 8 August 2006 I declined Mr Moe's claim that he had been unjustifiably dismissed. Costs were reserved and the parties were invited to attempt to resolve this issue themselves and if unsuccessful they had leave to refer the matter back to the Authority to determine.

[2] The respondent filed and copied on Mr Moe's representative a memorandum as to costs on 16 August 2006. The Authority wrote to Mr Moe's representative on 6 September enclosing a copy of the respondent's memorandum and advising that any reply should be filed and served by 20 September 2006. No memorandum as to costs has been filed on behalf of Mr Moe. It is appropriate that the Authority move to determine the issue of costs.

[3] Ms Douglas advises that the respondent has incurred total legal costs of \$7458.75 (including GST) and disbursements of \$322.00. She submits that a costs award of \$5000 would be a reasonable contribution to costs reasonably incurred by the respondent because its defence of Mr Moe's claim was wholly successful and Mr Moe's conduct required the respondent to incur additional costs in preparing for this matter.

[4] Mr Moe's statement of problem and witness statement did not disclose factual issues, of which he was aware, which proved important features of this employment relationship problem. While I accept that this is an investigation process it is incumbent on parties filing statements of problem to fairly put the other side and the Authority on notice of the basis of their claim and when directed to file witness statements fully set out their side of the story, including all the relevant facts. Mr Moe did not do so and I accept this complicated the respondent's preparation for this matter.

[5] The investigation meeting concluded in less than a day. The usual awards made by the Authority for such investigation meetings fall between \$1000 and \$3000. Applying the principles guiding the Authority's discretion to award costs¹ the applicant is entitled to an award of costs. A reasonable award for this matter is \$2000 plus a contribution to disbursements of \$200.

¹ *PBO Ltd v Da Cruz* (Employment Court, unreported, AC2A/05, 9 December 2005)

[6] Labana Moe is ordered to pay Mt Roskill Panelbeaters and Spraypainters Limited \$2200 as a contribution to the costs it has incurred in defending his personal grievance.

Marija Urlich
Member of Employment Relations Authority