

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2012] NZERA Wellington 71
5337407

BETWEEN

BRETT MATHYS
Applicant

AND

ROSS AND SUZY BOLTON
Respondent

Member of Authority: P R Stapp
Submissions received by: 1 June 2012
Determination: 29 June 2012

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Costs were reserved. The parties have not been able to settle costs. The applicant has applied for \$3,500 costs and \$109.71 disbursements.

[2] The respondent has opposed the extent of the claim, but acknowledges a sum is required to be paid and has submitted such a sum should be in the order of \$1,500-\$2,000.

Issues

[3] How much is the applicant entitled to from Ross and Suzy Bolton for costs?

Determination

[4] The influences in regard to costs in this matter are:

- a. That costs follow the event. Mr Mathys was successful in his claims.

b. That both parties will have to bear a portion of the costs they have each incurred.

c. That although the respondent has pleaded hardship, there is insufficient evidence that the respondent will not be able to pay some time in the future.

d. That the tariff approach to costs should be applied because there was an investigation required. This includes preparation for and attendances at the Authority's investigation meeting.

e. That the tariff includes residual costs including photocopying. I am not satisfied the cost of photocopying, included in the disbursements should be separately itemised. No reasons have been given that the respondents were responsible for any unnecessary costs in this regard. Both parties were required to provide certain documents that it goes without saying are part of the investigation process.

f. That there was nothing unusual about the matter to move the tariff up or down. It is recognised that the tariff is \$3,500.

g. That the filing fee was a necessary expense to activate the matter in the Authority.

h. That issues relating to the substance are not a consideration for the costs. Costs are decided as a matter of principle and are not to penalise the unsuccessful party. They are to contribute to reasonably incurred costs. In this matter the applicant has been put to the cost of representation, preparation and the filing fee. His costs have been \$7,347.22 plus the filing fee \$71.56 and photocopying \$38.15.

[5] It is my decision that Mr Mathys is entitled to costs in the order of \$3,500 and the \$71.56 filing fee.

Order of the Authority

[6] That Ross and Suzy Bolton jointly and severally pay Brett Mathys \$3,500 as a contribution to his costs and \$71.56 filing fee.

P R Stapp
Member of the Employment Relations Authority