

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 163A/10
5291183

BETWEEN	WAYNE PATRICK MAYNARD Applicant
AND	SMILEY FARMS LIMITED Respondent

Member of Authority:	R A Monaghan
Representatives:	W Maynard in person Margaret Penny, advocate for respondent
Memoranda received:	30 April 2010 from applicant 13 May 2010 from respondent
Determination:	20 May 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 9 April 2010 I found Mr Maynard was not constructively dismissed, rather his employment ended by his resignation. Costs were reserved.

[2] The respondent has filed a memorandum in respect of costs, citing costs of representation of \$4,000, plus disbursements as listed, and a mileage claim not supported by explanation. The total came to \$4,864.16.

[3] Mr Maynard disputed the calculation of the costs of representation, and said he is not financially able to pay the sum of \$4,864.16.

[4] Both parties referred to difficulties in setting a date for mediation. The difficulties arose out of the availability variously of Mr and Mrs Maynard and Mr and Mrs Kelly of SFL. The difficulties were brought to the Authority's attention and a

conference call was conducted in an attempt to resolve them, but no consensus was possible. Accordingly I arranged for an investigation meeting without the parties having attempted mediation. Neither party addressed how that matter should sound in costs, but in the circumstances it does not affect the amount I would otherwise award.

[5] The Authority's approach to costs is as set out in **PBO Limited (formerly Rush Security Limited) v da Cruz**¹. In general the successful party is entitled to a contribution to costs, and awards of costs based on a notional daily rate are acceptable unless the circumstances of a particular case warrant another approach.

[6] Regarding the costs incurred here, the investigation meeting addressed both Mr and Mrs Maynard's employment relationship problems. Mrs Maynard's and part of Mr Maynard's problem were settled and were the subject of consent orders by the Authority². They do not attract further orders for costs. They took up much of the meeting time and, if the documentation is an indication, much of the preparation time. I reduce the time capable of being claimed in costs accordingly.

[7] The remaining matter was Mr Maynard's personal grievance alleging constructive dismissal. The investigation as it related to that matter took less than half a day, and the claim was unsuccessful.

[8] SFL is entitled to a contribution to costs in respect of the personal grievance. There is no reason to depart from a notional daily rate, and while I note Mr Maynard's assertion that he cannot pay as much as \$4,864.16 there is nothing to indicate he will be unable to meet a sum based on a notional daily rate.

[9] Mr Maynard is therefore ordered to contribute to SFL's costs in the sum of \$750 inclusive of disbursements.

R A Monaghan

Member of the Employment Relations Authority

¹ [2005] 1 ERNZ 808

² **Kristy Maynard v Smiley Farms Limited**, 25 March 2010, AA 140/10; **Wayne Maynard v Smiley Farms Limited**, 25 March 2010, AA 141/10.