

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 10/10
5141001

BETWEEN GARY JOHN McAUSLIN
 Applicant

AND HIREQUIP LIMITED
 Respondent

Member of Authority: Helen Doyle

Representatives: Stephen McAuslin, Counsel for Applicant
 Ralph Webster, Advocate for Respondent

Submissions Received: 25 November 2009 for Applicant
 15 December 2009 for Respondent

Determination: 20 January 2010

DETERMINATION AS TO COSTS OF THE AUTHORITY

[1] In my determination dated 4 November 2009 I found that the applicant had a personal grievance that he was unjustifiably dismissed and awarded him compensation. I reserved the issue of costs and have now received submissions from the applicant's counsel and from the respondent's representative.

[2] The applicant is legally aided and is required to pay back to the Legal Services Agency the sum of \$3,545.16. Mr McAuslin advises that he has applied for an extension to that amount to enable him to lodge and serve submissions as to costs. The repayment amount to the Legal Services Agency presumably includes an amount in terms of mediation as the matter is described in the Legal Services Agency letter as *employment mediation, investigation hearing*.

[3] The applicant seeks full costs including the filing fee of \$70 or a reasonable contribution towards his costs.

[4] The respondent has also lodged submissions and has advised that Hirequip is prepared to pay \$1,500 towards the applicant's costs but if any more than that is awarded it would request part-payment over a period of months. The submissions lodged on behalf of the respondent by Mr Webster includes details of the respondent's view of the Authority's determination, although no challenge was filed. In any decision from the Authority one or sometimes both parties are going to be disappointed in the outcome. The point of including that view in submissions as to costs, however, is somewhat lost on me.

[5] I apply the principles in *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808. In *PBO* it was recognised that costs in the Authority are frequently modest. Sensible attempts have been made by the applicant to resolve the matter at, and outside of, mediation, as one would expect.

[6] In all the circumstances I am not satisfied that this is a case for which there should be an award of full costs. I do not consider that the amount required to be paid by the applicant to the Legal Services Agency comprises only those costs with respect to the investigation meeting.

[7] I intend to start with a daily tariff for the investigation meeting. The employment relationship problem was a straightforward matter and did not occupy a full day although four hours were still required. In those circumstances I am of the view the appropriate starting point for a notional daily tariff is \$1,700. I am not satisfied there should be an adjustment in terms of attempts to resolve the matter in circumstances to increase that daily tariff. The respondent did eventually agree to mediation.

[8] In terms of the parties' conduct, I am not satisfied as alleged by the applicant that the respondent unnecessarily contributed to an increase in costs at the investigation meeting. The submissions made were succinct and to the point and I am not satisfied there should be any adjustment on that basis. I do, however, make an adjustment of \$100 for the preparation by the applicant of the cost submissions.

[9] In all the circumstances I am of the view that a fair contribution towards costs is \$1,850.

[10] To the extent that time payment is required for that part in excess of \$1,500, Mr Webster is to advise Mr McAuslin of the amount the company is prepared to pay,

and I am sure that Mr McAuslin and the applicant will be agreeable to a sensible regime in that regard.

[11] If there are any difficulties with respect to that matter I reserve leave for either party to return to the Authority.

Helen Doyle
Member of the Employment Relations Authority