

[4] The respondent incurred actual costs in the sum of \$13,367.03 inclusive of GST and has attached invoices from the Otago Southland Employers Association. Mr Black refers the Authority to the judgment of the full Court of the Employment Court in *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808. The solicitor from the Employers Association, Mr Walker did not represent the company at the investigation meeting because he had by that stage left the Association and therefore legal fees for the actual attendance at the hearing have not been included.

Applicant's submission

[5] Mr Kilpatrick, on behalf of the applicant, submits that the respondent failed to acknowledge that it was unsuccessful in its counterclaim and that costs claimed by the respondent are well above normal awards in the Authority. Further, he submits that the respondent has failed to particularise the costs with specific reference to what amounts were incurred in respect of the counterclaim.

[6] The applicant submits that the respondent's counterclaims were ill-conceived and that there was unnecessary cost incurred by the applicant in defending the claims. Mr Kilpatrick submits that the applicant can claim full costs with respect to defending the respondent's claims and he has also attached to his submissions invoices for various attendances that he submits are related to the counterclaim. He submits in conclusion that the applicant should be awarded full costs for defending the counterclaim, or in the alternative, as both parties were successful in defending each other's claims, costs should lie where they fall.

Determination

[7] In my assessment of the determination the personal grievance was the more significant of the two claims the Authority was asked to investigate and determine. I find that costs should follow the event and be awarded in the respondent's favour for successfully defending that claim. I am not persuaded therefore that costs should lie where they fall. The counterclaim though has to be taken into account.

[8] The costs in the Authority are normally assessed on the basis of a daily tariff which is now recognised as \$3,500. Costs in the Authority are normally modest. An adjustment should be made to the daily tariff, to take into account that the respondent's counterclaim was unsuccessful, of \$800.

[9] I order Andrew McClintock to pay to Allied Security Limited, trading as Allied Security, the sum of \$2,700 being costs.

Helen Doyle
Member of the Employment Relations Authority