

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2011] NZERA Christchurch 150
5335196

BETWEEN ROSS McFARLANE
 Applicant

AND QUEENSTOWN
 ACCOMMODATION CENTRE
 LIMITED
 Respondent

Member of Authority: Philip Cheyne

Representatives: Ross McFarlane, Applicant
 Allan Baillie, Representative for Respondent

Submissions Received 14 September & 6 October 2011 from the Applicant
 6 October 2011 from the Respondent

Determination: 6 October 2011

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In a determination dated 8 September 2011 I rejected Mr McFarlane's constructive dismissal personal grievance claim but upheld his arrears claim. Costs were reserved. I now have emails from the parties setting out their respective views about costs. This determination resolves the question of costs.

[2] While Mr McFarlane represented himself at the Authority's investigation meeting he says that he got legal advice about his claim and he has provided a copy of the solicitor's invoice dated 28 July 2011 which includes a brief description of the work done. The invoice total is \$869.40. There is also a claim for the filing fee and postage fees.

[3] Mr Baillie says that the invoice states that it is for work done in relation to mediation which the Authority should not include in any costs assessment; and that

Mr McFarlane was unsuccessful with the bulk of his claim so he should not be awarded full costs.

[4] There were two aspects to Mr McFarlane's employment relationship problem, both of some substance: a personal grievance and a claim for an unpaid bonus. He failed with the former and succeeded with the latter. That is a common enough situation and the Authority usually treats such a claimant as the successful party for the purposes of costs with any award adjusted to reflect the actual outcome. I will adopt that approach here. There is no reason in the present case why costs should not follow the event.

[5] After the matter was lodged with the Authority it was referred to mediation. Mr McFarlane says that the mediation was on 26 May 2011 at 9.30am. There is an email from him to a lawyer timed at 3.16 pm the same day which appears to be when he initiated instructions to the lawyer. The lawyers invoice reads:

To our fees for professional services herein including receiving instructions from you, perusing information e-mailed through, telephone attendance with mediator, various correspondence and e-mails, various research and all matters incidental thereto

[6] I infer from this that the exchanges with the mediator were part but not all of the work done by the solicitor. Advice would have been given about the substance of Mr McFarlane's employment relationship problem and his prospects for success in the Authority. I am left to guess about the apportionment of time but I think I can safely say that at least two-thirds of the time would have been devoted to issues other than mediation. Again as an estimate, perhaps about half the remaining time would have been devoted to the unpaid bonus issue. That leaves legal costs of about \$290.00 as relevant for present purposes. This approach accounts for Mr McFarlane's partial success.

[7] Mr McFarlane seeks full costs. Sometimes there are grounds to award full or indemnity costs such as a party's conduct during the litigation. However, there is nothing about this case to justify such an order. The usual approach is to require the unsuccessful party to pay a reasonable contribution to costs reasonably incurred in the litigation. I assess \$200.00 as a reasonable contribution for the respondent to make to Mr McFarlane's legal costs.

[8] The respondent must also refund Mr McFarlane's lodgement fee and his postage costs associated with the proceedings.

Orders

[9] Queenstown Accommodation Centre Limited is to pay Mr McFarlane \$279.96 is costs and expenses.

Philip Cheyne
Member of the Employment Relations Authority