

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2013] NZERA Wellington 123
5392736

BETWEEN Chad McGovern
Applicant

AND South Eastern Geophysical Limited
Respondent

Member of Authority: Trish MacKinnon

Representatives: Danny Gelb, Advocate for the Applicant
Ian Matheson, Counsel for the Respondent

Submissions received: 28 August 2013 from the Applicant
6 September 2013 from the Respondent

Determination: 2 October 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination of 14 June 2013, I found that Chad McGovern had succeeded in a number of his claims against his former employer, South Eastern Geophysical Limited (SEG). I found that he had been unjustifiably dismissed, and that he had a valid expectation of work on one further seismic survey contract with SEG. I directed SEG to pay Mr McGovern remedies of lost wages, interest, and compensation for hurt and humiliation. Having found that Mr McGovern contributed to the situation that led to his personal grievance, the wages and compensation remedies awarded to him were reduced by 20%. Costs were reserved.

[2] The parties have not been able to agree on costs and the Authority has now received submissions on that matter from them. Mr Gelb advises that Mr McGovern incurred costs of \$6,842.50 inclusive of GST plus the Authority's filing fee of \$71.56 and air travel of \$408. He seeks a contribution towards costs of \$3,500 plus the reimbursement of the filing fee.

[3] Mr Matheson, on behalf of SEG, argues that costs should lie where they fall as Mr McGovern had only succeeded "*to a limited extent*" in his claims. He says the failure of his claim to holiday pay was particularly significant. Had that claim succeeded, the company would potentially have been exposed to similar claims from other employees. These could have totalled close to \$300,000.

[4] Mr Matheson also notes that Mr McGovern abandoned one of his two penalty claims, and was unsuccessful in the other. He says SEG's total costs for defending the claims against it were \$7,800 plus GST and disbursements. He submits that the company should recover costs for an amount at least equal to those sought by Mr McGovern. This would recognise its successful defence of Mr McGovern's claims for holiday pay and a penalty in relation to his employment agreement.

[5] I have considered the submissions of the parties in relation to both the outcome of Mr McGovern's claims before the Authority, and the principles relevant to costs awards for Authority investigations. These principles are well-known and have been set out in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*¹.

[6] Costs normally follow the event and it is appropriate that they do so in this instance. The greatest focus of the investigation meeting, which took the better part of one day, was on Mr McGovern's successful claim to have been unjustifiably dismissed.

[7] A relatively short period was devoted to the holiday pay claim, although submissions from both parties, particularly SEG, covered that issue in some depth. A lesser amount of time was devoted to Mr McGovern's claim for a penalty in relation to his employment agreement.

[8] The Authority's normal daily tariff is currently \$3,500. A moderate reduction should be made to reflect Mr McGovern's unsuccessful prosecution of some claims.

¹ [2005] 1 ERNZ 808

Determination

[9] South Eastern Geophysical Limited is ordered to pay Chad McGovern \$3,000 in costs, and \$71.56 in reimbursement of the Authority's filing fee, pursuant to clause 15, Schedule 2 of the Employment Relations Act 2000.

Trish MacKinnon
Member of the Employment Relations Authority