

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2014] NZERA Wellington 19  
5432060

BETWEEN CHRISTOPHER MENEAR-GIST  
Applicant

AND FOODSTUFFS NORTH ISLAND  
LIMITED Trading As TOOPS  
Respondent

Member of Authority: P R Stapp

Representatives: Jeremy McGuire, Counsel for the Applicant  
Darren Mitchell, Advocate for the Respondent

Investigation Meeting: On the papers at Wellington

Submissions Received: By 3 February 2014

Determination: 19 February 2014

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] The outstanding matter of costs was reserved by the Authority in [2013] NZERA Wellington 4.

[2] Mr Menear-Gist is seeking a sum for costs up to full indemnity costs. The respondent opposes the claim. Instead the respondent says that costs should lie where they fall or \$3,000 should be enough to help cover the applicant's costs.

[3] The principles on costs in the Employment Relations Authority have been well settled: (*PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808 applied). There is nothing new, novel and/or distinguishing and exceptional in the matter to depart from the usual practice, and not apply the tariff approach as to costs. As such this is not a matter for full indemnity costs.

[4] This is a matter for the tariff to apply. Also the Authority must consider to what extent if any the tariff should be adjusted and/or to let costs lie where they fall. The tariff takes into account all the facets of an investigation before the Authority and includes any GST payment and additional written submissions.

[5] Mr Menear-Gist was successful. He has incurred costs with his representation and the preparation involved for the investigation. While he did not succeed on all his claims the level of his success was significant enough for him to expect to receive some of his costs in return. This is assessed as a reasonable contribution with the tariff applying.

[6] The investigation meeting was held on 6 November 2013 and it continued on 18 November 2013 at Palmerston North. The hearing time was 1½ days. The withdrawal of an interim application saved time and money and meant that all the issues could be dealt with in a substantive investigation meeting. In the preparation for the investigation meeting there were three telephone conferences for the arrangements (17 and 20 September 2013, and 11 October 2013). There was nothing unusual about the telephone conferences and the matters involved. By the time the preparation commenced it is expected that both parties would have had some certainty about their claims from the statement of problem, the statement in rely (and any amendments) and the witness statements; and the parties should have reasonably anticipated the matters needing evidence and submissions. This was not as thorough as it could have been, but the investigation was able to proceed.

[7] The issues prior to the investigation meeting could have been avoided and required the parties to be more efficient in their planning and approach to their cases. The interlocutory matters may have been important to the parties, but the Authority had no particular issues and/or need to initiate the matters the parties thought that they needed to develop; thus the matters were unnecessary at the time in regard to the Authority's investigation. The Authority's investigation continued despite the parties' approach and planning to the various matters relating to their claims such as issues to do with documents, leverage and the evidence needed for their cases. I hold that given the time the hearing took and the parties own planning for their cases that the costs to each side were balanced out. In any event all the claims in the employment relationship problem were able to be dealt with in the time available during the 1½ days the investigation meeting took.

[8] I have applied the tariff on the basis of a 1½ day investigation meeting (as this was reasonable time to complete an investigation), and I hold it is not appropriate for me to adjust the \$3,500 per day tariff. It is certainly not a matter for indemnity costs as claimed.

[9] Mr Menear-Gist is entitled to \$5,250 contribution to costs, plus the filing fee of \$71.56.

[10] I order Foodstuffs North Island Limited trading as Toops to pay to Christopher Menear-Gist the sum of \$5,250 costs plus the \$71.56 filing fee.

P R Stapp  
Member of the Employment Relations Authority