



Authority's practice to award costs in respect of the GST element in bills of costs so I find that the amount I am to consider in relation to the applicant Mr Nelson's claim is \$1,165.

[4] Mr Reeves, of behalf of Hickory Bay Limited (Hickory Bay), also seeks costs and it details actual disbursement costs of around \$900 being principally the cost of an air fare and associated travel costs to enable one of Hickory Bay's directors (Mr Reeves) to appear at the investigation meeting in Christchurch.

[5] Mr Reeves of Hickory Bay argues that Mr Nelson was not in fact successful when one looks at the percentage that he was awarded against the quantum of the claim. Hickory Bay also contends that Mr Nelson, by his behaviour in managing his claim, contributed to the costs incurred by Hickory Bay.

### **The legal principles**

[6] The relevant principles are helpfully set out in a recent decision of the Full Court in *PBO Ltd v Da Cruz* AC2A/05, 9 December 2005.

[7] The Full Court approved the Authority's tendency to adopt a *tariff based approach* in respect of the determination of awards of costs and identified and approved the usual approach taken by the Authority in identifying the relevant elements of a costs award.

### **Discussion**

[8] A fundamental principle of costs awards is the precept that awards of costs typically follow the event. In this case, both parties can reasonably point to having been successful, although I incline to the view that Mr Nelson has a more persuasive argument than Hickory Bay because he felt unable to resolve the holiday pay issue without recourse to the issue of proceedings.

[9] Mr Reeves, for Hickory Bay, of course, argues that Mr Nelson did not try hard enough to resolve the holiday pay issue short of litigation and there may be truth in that view. However, consistent with the decision in the substantive matter that I have already made, I am disposed to think that in matters of this kind, there is a greater

onus on the employer party than the employee to follow matters up and successfully resolve them when there is disputation. This was a situation where the parties' previously good working relationship rapidly deteriorated to the extent that neither seemed able to work collaboratively with the other to resolve common problems.

[10] On the substance of Mr Nelson's claim, as I have already made clear, he was successful in his holiday pay claim which he always contended was the principal source of his concern. However, he also ran an argument that he was entitled to additional salary payments which he had not received and I found that that argument had no merit whatever.

[11] In the result, I think both parties must bare a share of the blame for their inability to resolve matters collaboratively or at least deal with each other courteously and respectfully.

[12] On the basis of a daily tariff, the cost award that might be made for a matter that took the length of time this matter took to deal with is probably less than \$1,000. In fact, both of the parties have incurred more than that in costs and they seek to recover that from each other.

### **Determination**

[13] I am satisfied that this is a case where the costs should lie where they fall. On that basis there will be no award of costs made against Hickory Bay in favour of Mr Nelson or against Mr Nelson in favour of Hickory Bay. Each party accordingly will meet its own costs.

James Crichton  
Member of Employment Relations Authority