

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 118/10
5272109

BETWEEN

ALEX NEWENHAM
First Applicant

And

JAMES WELLS
Second Applicant

AND

OCIS NEW ZEALAND
LIMITED
Respondent

Member of Authority: Dzintra King

Memoranda received: 4 December 2009 from Respondent
10 December 2009 from Applicant

Determination: 12 March 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] On 4 November 2009 I dismissed the applicants' claim as they failed to attend the investigation.

[2] The respondent's actual costs are \$7,083.00 plus GST and disbursements of \$50.

[3] The respondent says the applicants' conduct has contributed to the respondent's incurring unnecessary costs. They had ample opportunity to resolve the matter prior to the investigation meeting. They failed to properly set out their claim and articulate their concerns.

[4] However, the respondent did its best to prepare and provide evidence to answer what it believed to be the allegations. As the scope of the enquiry was unclear detailed preparation was undertaken.

[5] The applicants filed their witness statements three days after the deadline without seeking an extension or notifying the respondent.

[6] Their failure to attend or notify anyone that they would not be attending is indicative of the fact that the matter was no longer a real issue for them.

[7] The respondent seeks \$7,000.

[8] Mr Minto for the Unite union submitted that the matter could have been adjourned until 1pm so that the applicants could attend. However, Mr Minto was unable to give an assurance that they would be able to attend at that time.

[9] Mr Minto submitted that \$500 would be an appropriate payment. He said the issue was simple and so would not have required much preparation. He claimed that if the hearing had proceeded the applicants may have been successful and if they had not been then costs of approximately \$1,000 would have been awarded against them. As the matter was not heard a reduced amount was reasonable.

[10] I agree with the respondent that the claim was not clear and that the applicants' evidence would have required significant elaboration.

[11] The respondent was put to the trouble of preparing briefs of evidence and collating a document bundle.

[12] It is unsatisfactory to speculate on the outcome of the claim had the applicants appeared; or to speculate on what costs' awards might have been had they been successful.

[13] The criteria for awards of costs are set out in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

[14] The respondent is entitled to a reasonable contribution to its reasonably incurred costs. I set that at \$3,000.00 plus the disbursements sought, a total of \$3,050.

Dzintra King

Member of the Employment Relations Authority