

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2017] NZERA Auckland 7  
5624085

BETWEEN

DALE NORMAN  
Applicant

AND

CANAM MANAGEMENT  
SERVICES LIMITED  
Respondent

Member of Authority: Robin Arthur

Representatives: Nick Carter, Counsel for the Applicant  
Loukas Petrou, Advocate for the Respondent

Determination: 11 January 2016

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A. Within 28 days of the date of this determination Canam Management Services Limited must pay Dale Norman \$7,378.22 for his costs and expenses in this matter.**

[1] By a determination issued on 28 November 2016 the Authority found Canam Management Services Limited (CMSL) had unjustifiably dismissed Dale Norman.<sup>1</sup> It ordered CMSL to pay remedies to Mr Norman. Costs were reserved with a timetable set for memoranda to be lodged if the parties were not able to resolve that issue themselves. The determination advised the parties that, if asked to determine costs, the Authority would likely do so on its usual notional daily rate of \$3500 (applicable for matters lodged before 1 August 2016), unless particular circumstances or factors required an upward or downward adjustment of that tariff.<sup>2</sup>

[2] Mr Norman, by submission from counsel lodged on 9 December 2016, sought an order for costs and expenses totalling \$7,378.22. This amount comprised the daily tariff of \$3500 for the two days of investigation meeting and reimbursement of his

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<sup>1</sup> [2016] NZERA Auckland 389.

<sup>2</sup> *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].

expenses for two amounts – firstly, the \$71.56 fee paid to lodge his application in the Authority and secondly, the \$306.66 hearing fee charged by the Authority for the second day of the investigation meeting. The hearing fee is charged at the rate of \$153.33 for each half day.

[3] He sought those amounts on the basis that his claim was substantially successful with remedies awarded of \$12,026 for lost remuneration and \$8000 as compensation for loss of dignity, humiliation and injury to his feelings.

[4] CMSL, by email from its managing director on 23 December 2016, opposed any order being made for it to pay costs to Mr Norman. In the event that it was ordered to pay costs, CMSL proposed the amount be no more than \$150 for each of the two days of the investigation meeting.

[5] None of the three reasons CMSL put forward for that proposition were sufficient to deny Mr Norman his entitlement to an order for costs for his successful application or to warrant a downward adjustment to the daily tariff.

[6] Firstly, CMSL said “the employment company” had no money to pay costs as it operated on a break even basis. This appeared to be a reference to its role as the limited liability entity that employed staff who worked for other entities which are part of the Canam Construction group of companies. As part of that group CMSL is more likely than not to be able to access the necessary funds for an award of costs. Whatever reasons the Canam group has for its arrangements to have staff employed through CMSL could not defeat its obligation to pay costs where it was found to have unjustifiably dismissed an employee.

[7] Secondly, CMSL said it considered the Authority’s award of lost compensation to Mr Norman was “unfair to say the least” because he had done work on his own private business during the three month period for which lost remuneration was awarded. Mr Norman had applied for six months’ lost remuneration but was awarded three months. It was the minimum amount that s 128(2) of the Employment Relations Act 2000 required the Authority to award to him in those circumstances. The final order then applied a substantial deduction, of \$4000, from that amount to account for earnings he had made in mitigation of his loss during that three month period. Consideration of costs is not an opportunity to re-litigate the substantive determination. If CMSL wished to challenge the Authority’s determination on lost

remuneration, it could have elected to have some or all of the matter heard by the Employment Court.

[8] Thirdly, CMSL disputed whether Mr Norman would have received the amount awarded to him if he had continued working for it during that period as there was less work during that period and another person was assisting with the work. As noted in the substantive determination Mr Norman's assessment of his monthly earnings was not challenged in CMSL's evidence or submissions. CMSL's argument that the assessment should have been lower was, again, an attempt to re-litigate the substantive determination. It was not relevant to assessment of costs.

[9] Costs follow the event, which in this case was Mr Norman's success in establishing that he was unjustifiably dismissed and entitled to remedies. As a result it was appropriate to award \$7000 as a contribution to his costs of representation at the two days of the investigation meeting and a further \$378.22 in reimbursement of the expenses of the Authority filing fee and the hearing fees.

Robin Arthur  
Member of the Employment Relations Authority