

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 301A/09
5133770

BETWEEN KEVIN O'DONNELL
 Applicant

AND WAAHI PARAONE LIMITED
 Respondent

Member of Authority: Marija Urlich

Representatives: Marcus Steele, for Applicant
 Wayne and Toni Brown, for Respondent

Submissions received: 1, 4, 23, 29 and 30 September 2009, from Applicant
 4, 17 and 29 September 2009 from Respondent

Determination: 14 October 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 25 August 2009 (AA301/09) I declined Mr O'Donnell's claim that he was unjustifiably dismissed along with various claims of statutory breaches but one concerning the failure to provide a written employment agreement for which a \$100 penalty was awarded.

[2] In his memoranda to the Authority Mr Steele advises Mr O'Donnell's costs in relation to this matter total \$2020.00. Disbursements are included in this total. The costs also include attendance at two mediations. It is not usual for mediation costs to be recovered in Authority costs awards. No supporting documentation has been provided to support the claim Mr O'Donnell has actually incurred the costs claimed. Mr Steele's submissions make reference to matters which were not relevant to the substantive issues before the Authority and are not relevant to the question of costs.

[3] Mr and Mrs Brown say Mr O'Donnell is not entitled to any award of costs and seek a finding of costs in WPL's favour. They seek total costs of \$6205. This claim

arises from time involved in collating wage and time records and staff and executive attendance at the Authority.

[4] During the exchange of memoranda information was put before the Authority which raised questions as to Mr Steele's continued authority to represent Mr O'Donnell. Mr Steele has advised the Authority that he represents Mr O'Donnell pursuant to section 236 of the Employment Relations Act 2000. I accept that assurance.

Determination

[5] *PBO Ltd v Da Cruz*¹ sets out the appropriate principles to be applied by the Authority in exercising its costs discretion. It is usual that costs follow the event. Mr O'Donnell has enjoyed a very modest level of success. A modest award of costs is warranted. There will be no award of costs to WPL. WPL was unsuccessful in defending all Mr O'Donnell's claims and was obliged to provide wage and time records on request².

[6] In the circumstances and in particular the straight forward nature of the matters before the Authority, the short hearing time involved and Mr O'Donnell's limited degree of success, a reasonable contribution to Mr O'Donnell's costs are the reimbursement of the \$70 filing fee plus \$100 towards costs actually incurred. Payment of the \$100 award is conditional on Mr Steele providing documents to establish Mr O'Donnell has actually incurred the costs to which a contribution has been ordered.

[7] Waahi Paraone Limited is ordered to pay \$100 to Kevin O'Donnell in costs, on fulfilment of the conditions set out in paragraph [6] above, plus \$70 to reimburse the filing fee, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

Marija Urlich

Member of the Employment Relations Authority

¹ [2005] 1 ERNZ 808

² Section 130(2) Employment Relations Act 2000