

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

AA 383A/08
5097589

BETWEEN CHRISTOPHER PAINTER
Applicant
AND COMMISSIONER OF POLICE
Respondent

Member of Authority: Philip Cheyne
Representatives: Alex Hope, Counsel for Applicant
Rachael Schmidt, Counsel for Respondent
Submissions: 28 November 2008 from the respondent
19 December 2008 from the respondent
Determination: 22 December 2008

DETERMINATION OF THE AUTHORITY

[1] In a determination dated 7 November 2008 I found that Mr Painter did not have a personal grievance against his former employer. Costs were reserved to be dealt with by memoranda which have now been received. This determination resolves the question of costs.

[2] I am told that the respondent incurred costs of \$13,606.00 (excluding GST) and disbursements of \$898.75 in respect of the two and a half day investigation meeting. The claim is for 75% of costs (\$10,204.60) plus disbursements. The applicant accepts that costs of \$6,000.00 (including GST) would be reasonable. That is calculated by reference to a multiple of 1.5 for two days hearing time applying a notional hourly rate said to be reasonable. I am referred to *Okeby v Computer Associates (NZ) Ltd* [1994] 1 ERNZ 613 to support this approach.

[3] The leading authority dealing with costs in the Employment Relations Authority is *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808.

Applying those principles, there is no reason for costs not to follow the event. The respondent was completely successful and is entitled to a contribution towards costs incurred.

[4] The Employment Court in *Da Cruz* held that in the Authority awards for costs will be modest. The Court approved the use by the Authority of a daily tariff approach to assessing costs and expressly held that the approach in cases such as *Binnie v Pacific Health Ltd* [2002] 1 ERNZ 438 (CA) applicable in the Court was not applicable to the Authority. There is no reason to depart from a daily tariff approach in the present case,.

[5] Counsel for the applicant submitted that the Authority has tended to award \$1,500.00 - \$2,000.00 per day. However *Da Cruz* referred to a range of \$1,000.00 to \$3,000.00, a range mentioned in a Department of Labour brochure. In the present case, a figure towards the upper end of the range is appropriate. Mr Painter sought reinstatement so the outcome had importance beyond a money claim. There was a significant amount of material to canvass and Mr Painter's claims required a comprehensive response involving a large number of witnesses covering a lengthy period of time. In these circumstances an appropriate award of costs in favour of the respondent based on 2½ days meeting time is \$7,500.00.

[6] Disbursements of \$898.75 are sought. This sum is for airfares and taxi charges. Crown Law counsel is based in Wellington, hence the travel requirement. However there is no reason for the applicant to meet the additional cost of the respondent appointing counsel from outside Auckland. The employment was based in Auckland and all the principal witnesses were located there.

Summary

[7] Mr Painter is to pay \$7,500.00 to the respondent as a contribution towards the costs incurred by the successful party.

Philip Cheyne
Member of the Employment Relations Authority