

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 37/10
5165317 & 5165304

BETWEEN ALPESHKUMAR
 ASHWINBHAI PATEL AND
 PINALBEN ALPESHBHAI
 PATEL
 Applicants

AND DEVAL ENTERPRISES
 LIMITED
 Respondent

Member of Authority: Marija Urlich

Representatives: Vijay Naidu, Counsel for Applicant
 Victor Raman, Counsel for Respondent

Submissions and further 16 December 2009, 25 and 28 January 2010, from
information received: Applicants
 21 January 2010 from Respondent

Determination: 29 January 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 30 November 2009 (AA427/09) I found Deval Enterprises had employed the applicants, Mr and Mrs Patel, and made orders requiring fulfilment of the obligations owed under that employment agreement. Costs were reserved. The parties have been unable to resolve this issue and costs memoranda have been filed setting out the parties' respective positions.

[2] In his memorandum to the Authority Mr Naidu advises Mr and Mrs Patel's costs in relation to this matter total \$12,585.93 plus disbursements of \$250.95. He seeks a costs award of \$10,880 plus disbursement of \$290:

- The applicants were successful and costs should follow the event;

- The proceedings were of average complexity – the numerous found failures of the respondent to meet obligations under the Employment Relations Act 2000 meant the proceeding could not be considered straightforward particularly given the respondent’s denial of those obligations;
- The contribution to costs sought is reasonable – the costs have been calculated modestly using the scale provided in the District Court Rules; and
- The respondent unreasonably failed to settle the applicant’s claim, including refusing to accept a reasonable settlement offer made on the first day of hearing.

[3] Mr Raman submits that no award of costs is warranted or a very minimal award given:

- The applicants’ settlement offers were unrealistic; and
- The respondent made reasonable efforts to mediate the issues between the parties and made reasonable settlement offers.

Determination

[4] *PBO Ltd v Da Cruz*¹ sets out the appropriate principles to be applied by the Authority in exercising its costs discretion.

[5] It is usual that costs follow the event. I find that an award of costs is warranted in this matter. Costs incurred in mediation do not usually form part of any costs award by the Authority. The detail of the settlement offers made has not been provided to the Authority. I take from this that those offers were made on a without prejudice basis. I accept this matter had a degree of complexity and that it was important to the parties given the fundamental nature of the issues before the Authority. The matter was properly before the Authority for investigation and the parties participated in that process.

¹ [2005] 1 ERNZ 808

[6] In the circumstances of these proceedings, in particular the nature of the matters before the Authority and the hearing time involved (1 1/2 days), and accepting \$3000² as a usual notional daily rate in the Authority, I set the costs award at \$5000 plus disbursements of \$250.95.

[7] Deval Enterprises Limited is ordered to pay Alpeshkumar Ashwinbhai Patel and Pinalben Alpheshbhai Patel \$5000 in costs plus disbursements of \$250.95, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

Marija Urlich

Member of the Employment Relations Authority

² *Chief Executive, Department of Corrections v Tawhiwhirangi (No 2)* [2008] ERNZ 73