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Peacock v AFFCO Limited WA86A/10 (Wellington) [2010] NZERA 895 (12 November 2010)

Last Updated: 29 November 2010

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

WA 86A/10 5278584

BETWEEN Waaka Peacock

Applicant

AND AFFCO Limited

Respondent

Member of Authority: Denis Asher

Representatives: Mr Peacock represented himself

Graeme Malone for the Company

Submissions received: By 11 November 2010

Determination: 12 November 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 5 May 2010 (WA 86/10) I found against Mr Peacock's various unjustified disadvantage claims. Costs were reserved. This determination followed on from an earlier, interim decision (parties as above, WA 14/10, 1 February 2010) in which I found in favour of Mr Peacock and granted his application for various grievances to be brought out of time. Costs in that determination were also reserved.

Applicant's Costs Submissions Summarised

[2] Mr Peacock advises he is in no position to contribute to the costs sought by the respondent (the Company). That is because he is the sole wage earner for his family, has had "*lean wages for some time now due to lack of stock with AFFCO New Zealand*" (applicant's letter of 9 November 2010), has a mortgage which takes up most of his weekly earnings and has had to go to the food bank during the past few months to help feed his family.

[3] Mr Peacock concedes he was warned of the costs risks of continuing with his claim but "*the whole point was that there was a need to stick to the principle of this matter*" (above).

[4] Mr Peacock says that matters have significantly improved as a result of him having gone through with this matter, including the fixing of a saw bench table, the departure of a manager who was harassing him and his now having a supervisor "*who is good to work with, who listens and cares about the safety of all staff. This is all I wanted from the beginning*" (above).

The Respondent's Position Summarised

[5] Cost should follow the event.

[6] At pars 12 and 15 to 17 of its earlier, interim determination the Authority gave clear notice to Mr Peacock that his substantive claims were unlikely to succeed without further corroborative evidence, that they were any way overstated and,

even if he did succeed, contributory fault would likely deprive him of any benefit other than a *de minimus* one.

[7] Mr Peacock proceeded despite this clear advice. He did not produce additional evidence of the nature required but rather evidence re-litigating what had already been said. He continued to seek remedies that were either grossly excessive or incapable of being granted.

[8] While financial hardship/ability to pay is a relevant costs consideration as a matter of equity and good conscience it does not justify a refusal to award costs at all. The applicant was warned of the risks of proceeding and, having failed, it is not therefore inequitable to grant costs on a normal basis and regard can be had to the parties reaching agreement over time payment. The saw bench issue was one of many matters raised by Mr Peacock. No one was injured by the bench nor faced injury and the applicant simply refused to accept evidence from others well qualified to make the assessment that it was in order to be used, and the respondent any way did not require Mr Peacock to work on the bench if did not want to do so.

[9] The normal tariff for a hearing of the duration experienced including preparation time is around \$2,500 to \$3,000. The respondent's actual costs were \$11,974.65 plus GST. That however included time in respect of mediations and the interim hearing. Actual costs in respect of the investigation were in the order of

\$5,100.

[10] Given the above it is submitted that a reasonable contribution towards costs is

\$3,000.

Discussion and Findings

[11] In determining this matter my approach to costs is informed by *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] NZEmpC 144; [2005] 1 ERNZ 808, including: there is a discretion as to whether costs should be awarded and what amount; that it is open to the Authority to consider whether all or any of the parties' costs were unnecessary or unreasonable; awards will be modest; and the nature of the case can result in costs lying where they fall.

[12] I accept the respondent's submissions, particularly that Mr Peacock was on clear notice of the risk of proceeding with his substantive claims.

[13] Having regard to the above, and the short duration of the investigation (less than a whole day) I am satisfied that a costs award of \$2,000 in favour of the Company is appropriate, particularly given the respondent's willingness to accept payment over a period of time.

Determination

[14] Mr Peacock is to pay the Company as a contribution to its fair and reasonable costs the sum of \$2,000.00 (two thousand dollars).

Denis Asher

Member of the Employment Relations Authority

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