

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 153A/09
5132884

BETWEEN JAYSEE PILLAY
 Applicant

AND RADIUS SECURITY
 LIMITED SECURITY
 Respondent SECURITY

Member of Authority: Marija Urlich

Representatives: Truc Tran, Counsel Applicant
 Mark Beech & Shima Grice, Counsel for Respondent

Submissions received: 8 July 2009, from Applicant
 23 June 2009, from Respondent

Determination: 20 August 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 14 May 2009 (AA325/08) I declined Mr Pillay's claim that he was an employee. Costs were reserved. The parties were invited to attempt to resolve this issue themselves which they advise they have been unable to. I have received memoranda setting out the parties' respective positions in respect of costs.

[2] Radius Security's costs in defending this matter exceed \$26,000 with disbursements totalling \$667.78. Mr Beech submits that Mr Pillay should be ordered to contribute \$4000 to those costs because:

- The applicant was not forthcoming with relevant information despite repeated requests for documents made prior to the hearing;
- The investigation meeting lasted one day with written submissions filed subsequently;

- Further evidence was filed after the investigation meeting which required a response;
- The respondent gave the applicant, through counsel, repeated costs warnings; and
- For these reasons the upper end of the usual notional daily rate applied in the Authority would be appropriate.

[3] Mr Tran submits that Mr Pillay's claim was not frivolous requiring the weighing of competing factors, the Authority should follow the usual principles for setting costs in the Authority and base any award on an appropriate notional daily rate being \$2000, a rate consistent with the application of these principles by the Employment Court in *Terson Industries Limited v Loder*¹.

Determination

[4] *PBO Ltd v Da Cruz*² sets out the appropriate principles to be applied by the Authority in exercising of its costs discretion.

[5] It is usual that costs follow the event and I find that an award of costs is warranted in this matter. The application was not frivolous. The only unusual feature of this case was the process around the provision of relevant documents which required the intervention of the Authority. It is regrettable that such a high level of costs has been incurred in a matter which involved an application of settled law following a straightforward factual inquiry.

[6] **Mr Jaysee Pillay is ordered to pay \$3000.00 to Radius Security Limited in costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.**

Marija Urlich

Member of the Employment Relations Authority

¹ 30 April 2009, Shaw J, WC 10/09

² [2005] 1 ERNZ 808