

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2016] NZERA Christchurch 90
5601972

BETWEEN STEPHEN READER
 Applicant

A N D CANTERBURY DISTRICT
 HEALTH BOARD
 Respondent

Member of Authority: James Crichton

Representatives: David Beck, Counsel for Applicant
 Penny Shaw, Counsel for Respondent

Submissions Received: 18 May 2016 for Applicant
 27 May 2016 for Respondent

Date of Determination: 21 June 2016

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In my substantive determination issued as [2016] NZERA Christchurch 53 on 26 April 2016, I determined that Mr Reader had a personal grievance by reason of having suffered a disadvantage because of unjustifiable actions of his employer (CDHB).

[2] While I directed that the warning given to Mr Reader by CDHB ought to be expunged from his personal file and that CDHB take certain action consequent upon the removal of the warning, I declined to award Mr Reader any compensation for non-economic loss because of his significant contribution to the circumstances giving rise to the personal grievance.

The claim for costs

[3] Mr Reader seeks an amount of costs equivalent to two-thirds of the total amount he expended in obtaining legal advice in this matter.

[4] He argues that he is entitled to that amount because of the contention that the CDHB dealt with the matter unreasonably, and in particular, refused proper attempts to resolve the matter on a cost-effective basis.

[5] Moreover, Mr Reader maintains that CDHB effectively ran the case simply to evidence a “*trial of strength*” between two members of the management team who dealt with Mr Reader during the relevant period.

The response

[6] CDHB maintains simply that as both parties were partially successful costs should lie where they fall. This thesis is said to be demonstrated by the fact that while Mr Reader was able to satisfy me the warning ought to be expunged, I declined to award him any compensation because of the significant contribution I felt he had made to the circumstances giving rise to his personal grievance.

Determination

[7] Both parties refer to the relevant law on costs fixing in the Authority and I need not recite those principles again here.

[8] The starting point, as always, must be the daily tariff which the Authority traditionally applies in a costs fixing environment. That daily tariff is currently set at \$3,500.00 for a one day fixture such as this.

[9] The effect of the uplift sought by Mr Reader is to add a further \$2,500.00 to that sum.

[10] Conversely, the thrust of CDHB’s submissions is to seek a reduction in the daily tariff to zero because of its contention that both parties were equally successful. I do not agree with that submission. Mr Reader was completely successful but I abated his remedies because I considered that he had significantly contributed to the circumstances giving rise to his grievance.

[11] It would be inequitable and not in accordance with principle to effectively decline to give Mr Reader access to a contribution to the costs that he incurred in successfully contending he had a personal grievance simply because he had contributed to the circumstances giving rise to that grievance. The logic of this proposition is inescapable; Mr Reader's contribution to the circumstances giving rise to the personal grievance has already been taken account of in the remedies that were awarded to him and it would be wrong in principle to take account of that contribution a second time.

[12] So having rejected the submission of CDHB that costs should lie where they fall, the next question is whether there should be an addition to the daily tariff because of Mr Reader's contention that the behaviour of CDHB materially increased the costs he incurred.

[13] However, before turning to that question, I need to consider whether the costs incurred by Mr Reader are themselves reasonable for a matter of this kind. I have been provided with evidence that the total fees incurred amount to about \$9,500.00 inclusive of GST and unbilled work in progress. I consider that an entirely reasonable amount to be charged by Mr Reader's counsel for a matter of this kind.

[14] While I am not especially attracted to Mr Reader's principal contention that the way in which CDHB dealt with this matter resulted in him incurring additional cost, I think his secondary submission has more merit. That is quite simply that the CDHB is a large well-resourced employer; indeed, I think it is correct to say it is the largest employer in the South Island.

[15] It is certainly the case that the CDHB had access to human resources advice throughout the consideration of the events that gave rise to this proceeding.

[16] That being the position, I think it fair to expect a more exacting standard for the behaviour of the employer than would be the case for a smaller or less well-resourced employer.

[17] Having reflected on the matter carefully, I think the proper award is an amount of \$5,571.56, which represents a contribution to Mr Reader's costs of \$5,500.00 together with the reimbursement to him of the Authority's filing fee of \$71.56.

[18] CDHB is to pay to Mr Reader the sum of \$5,571.56 as a contribution towards his costs.

James Crichton
Chief of the Employment Relations Authority