New Zealand Employment Relations Authority Decisions

Riley and anor v Blueprint Limited (Christchurch) [2011] NZERA 434; [2011] NZERA Christchurch 93 (23 June 2011)

Last Updated: 7 July 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2011] NZERA Christchurch 93
5280197

BETWEEN CHRIS RILEY and SHANE

WOODS Applicants

A N D BLUEPRINT LIMITED

Respondent

Member of Authority: Representatives:

Submissions Received:

James Crichton

Greg Lloyd, Counsel for Applicants Robert Thompson, Advocate for Respondent

14 April 2011 from Applicants 28 March 2011 from Respondent

Date of Determination:

23 June 2011

COSTS DETERMINATION OF THE AUTHORITY

Introduction

[1] The Authority's substantive decision in this matter issued on 28 January 2011. The respondent employer (Blueprint) was successful in resisting the personal grievance claims brought against it by the applicants, Messrs Riley and Woods. Costs were reserved.

The application for costs

[2] Blueprint, as the successful party, seeks an award of costs in the sum of $1,500 for each of the applicants, being a total award of $3,000. Messrs Riley and Woods resist that application on the basis that costs should lie where they fall.

The respondent's submissions

[3] The respondent relies on the general principle that costs typically follow the event and notes that, as the successful party, Blueprint is entitled to an award of costs.

The Authority is told that Blueprint incurred total costs of $6,221 exclusive of GST in the defence of the personal grievance claims.

[4] Relying on the leading case of *PBO Ltd v. Da Cruz* [2005] NZEmpC 144; [2005] 1 ERNZ 808, Blueprint refers to the daily tariff approach typically adopted by the Authority in costs fixing and refers also to the Authority's equitable jurisdiction and

its discretion in the costs setting.

The applicants' submissions

[5] The applicants' submissions resist any costs award. A number of arguments are advanced in support of this proposition, the first of which is that Blueprint made no effort to seek to resolve matters on a representative-to-representative basis before filing an application with the Authority for costs to be fixed. It is suggested that Blueprint failed to follow normal accepted practice in trying to resolve matters of costs before recourse was had to the Authority.

[6] In particular, Messrs Riley and Woods criticise Blueprint for failing to take any steps at all to engage with them on the subject of costs. It is contended that the first that Messrs Riley and Woods knew about the application for costs was when they were served with the submission to be filed in the Authority and that was some two months after the determination issued.

[7] But Messrs Riley and Woods also criticise the Authority for failing to specify a timetable for the fixing of costs. The Authority regularly simply reserves costs. The Authority would expect representatives to read its Determinations and to be aware of the practice and procedure in this jurisdiction.

[8] Counsel for Messrs Riley and Woods then proceeds to argue that the alleged inadequacy of the Authority's determination of the matter ought to sound in costs. This graceless submission does counsel no service. If the determination is, as counsel alleges, so legally deficient as to be wrong, then the proper course of action would have been to challenge the decision. Supporting submissions that the Authority's decision was both too short and without the benefit of any authorities, are in the same category.

[9] In the end, the Authority's decision on the substantive matter was based on the evidence that was presented by the parties and the Authority preferred the evidence advanced by Blueprint to that advanced by the applicants. None of that has any relevance to costs.

Legal principles

[10] Costs fixing in the Authority has been the subject of a helpful analysis by the Full Bench of the Employment Court in *PBO Ltd v. Da Cruz,* supra. That decision gives guidance to the Authority in the fixing of costs but generally approves the tariff-based approach frequently adopted by the Authority in a costs setting environment. Amongst other things, it identifies the usual principles that costs typically follow the event, that costs awards in the Authority tend to be more modest than in an adversarial forum and that the award of costs is a discretionary one.

[11] Applying those principles to the present case, it is plain that Blueprint was completely successful in defending Messrs Riley's and Woods' claims and accordingly, in principle anyway, is entitled to seek a contribution to its costs from the unsuccessful applicants.

[12] However, counsel for Messrs Riley and Woods does make the useful submission that Blueprint did not take the usual steps to try to resolve matters before resort was had to the Authority. While the Authority can take some notice of the devastating Christchurch earthquakes which were intervening factors in the ability of Christchurch advocates to get things done, I do accept the submission that there ought to have been a greater effort made to resolve the matter of costs by agreement. I take that aspect into account in the overall assessment of the matter.

[13] Conversely, I do not accept the submission made by Messrs Riley and Woods that they should not make any contribution to Blueprint's costs. That is simply unrealistic and the suggestion that they were somehow entitled to assume that, with the passage of time, costs were not sought is, I think, fanciful.

Determination

[14] This was a matter dealt with by the Authority in not much more than half a day and accordingly, if the daily tariff approach were to be adopted in the fixing of costs, then the starting point would be perhaps $2,000, the daily rate having escalated over time to around $3,000 a day on current figures. However, I take into account the point that Messrs Riley and Woods make about the failure of Blueprint to genuinely engage with them prior to referring the matter to the Authority and accordingly I rebate the starting figure by $500 to take account of that submission.

[15] That leaves a figure of $1,500 as a contribution to the costs of Blueprint to be made by Messrs Riley and Woods and I think that that is a fair assessment of the contribution that the applicants ought to make to the respondent. I do not accept the applicants' submission that costs should lie where they fall; this is not a case where there are any unusual circumstances which would justify such a submission. Blueprint is entitled to a modest contribution to its costs in successfully defending the applicants' claim.

[16] I direct that the applicants are to pay to Blueprint the total sum of $1,500 as a contribution to the costs Blueprint reasonably incurred in defending the claim brought against it by the applicants.

James Crichton
Member of the Employment Relations Authority