

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 79/09
5133392

BETWEEN Hoera Ripohau
Applicant

AND Bridgeman Concrete (Hawkes
Bay) Limited
Respondent

Member of Authority: Denis Asher

Representatives: Peter Cranney & Anthea Connor for Mr Ripohau
Gary Tayler for the Company

Submissions received: By 8 June 2009

Determination: 9 June 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination of 3 October 2008 (WA 114A/08) I directed that Mr Ripohau be reinstated to his driving position, be paid any monies lost as a consequence of his unjustified dismissal and that the Company pay to him \$9,000 compensation for hurt.

[2] Costs were reserved.

Mr Ripohau's Costs Claim

- [3] In their submission received on 27 April 2009 counsel for Mr Ripohau seek costs of \$2,300 plus GST towards actual costs incurred of \$3,500 plus GST.
- [4] Reliance is placed on the principles set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808, at para 44.
- [5] Actual costs were incurred on the basis of 14 hours at a rate of \$250 per hour.
- [6] Mr Ripohau is entitled to a costs award regardless of whether he was or was not supported by his union.
- [7] It is submitted that a two thirds contribution of \$2,300 plus GST is reasonable in the circumstances, plus the filing fee of \$70 and office expenses of \$78.

The Company's Response

- [8] The respondent accepts that costs generally follow the event and *Da Cruz* (above) sets out the relevant principles.
- [9] The respondent also accepts the reasonableness of the amount of costs claimed (excepting office expenses) but believes that Mr Ripohau's union may have borne the costs of litigation at all times.
- [10] No detail has been provided as to who was billed and paid for the litigation, but if it was the union no costs should be awarded. To do so would allow the union to recover its costs that were incurred as part of its services to members for which fees are paid.
- [11] There is case law allowing unions to recover costs but in all cases they were party to the proceedings.
- [12] The applicant has never attempted to seek agreement on costs and these proceedings occasioned surprise.

Findings

- [13] As agreed by the parties, the Authority's discretion with which to award costs is now well settled and typically follow the event: *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.
- [14] This investigation took most of the day, albeit some of that time was incurred by the parties attempting to settle the matter on their own terms.
- [15] It is to be regretted if no initial attempt was made by the parties to reach agreement on costs. However, it is more cost efficient and consistent with the Authority's statutory direction to be speedy that I now determine the matter.
- [16] I do not accept that costs incurred by unions on behalf of their members are not recoverable unless the union is also a party to the proceeding:
- [17] I am satisfied there is no reason to depart from the Authority's normal approach to costs, and the range of awards often given. Having regard to the above a costs award as sought by the applicant is appropriate in all the circumstances.
- [18] Costs are often borne by unions or insurers or others who are not party to proceedings and "... such issues I regard as irrelevant to the (costs) decision ...": *IHC New Zealand Incorporated v Scott*, unreported, Perkins J, 18 Oct 2006, AC 45A/06.

Determination

- [19] The Company is to pay Mr Ripohau as a contribution to his fair and reasonable costs the sum of \$2,448 (two thousand, four hundred and forty-eight dollars) plus GST.

Denis Asher

Member of the Employment Relations Authority