

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Evert Roland (Applicant)
AND Amalgamated Builders Limited (Respondent)
REPRESENTATIVES Philip Horrocks, Counsel for Applicant
Don Rhodes, Advocate for Respondent
MEMBER OF AUTHORITY Helen Doyle
SUBMISSIONS RECEIVED 10 October and 25 October 2005
DATE OF DETERMINATION 28 October 2005

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 20 June 2005 I found in favour of the applicant that he had a personal grievance, that he was unjustifiably dismissed. I made an award to Mr Roland for a compensation payment under s.123(c)(i) of the Employment Relations Act 2000 and found that he should be paid a contribution toward mileage expenses.

[2] Sadly, counsel for the applicant, Mr Horrocks is now deceased. Cost submissions which Mr Horrocks had prepared before his death were forward to the Authority and Mr Rhodes on behalf of the respondent by another partner from Mr Horrocks' firm.

[3] The applicant seeks total costs of \$5,620.00 made up as below:

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|------------------------------------|------------|
| (i.) Legal fees (inclusive of GST) | \$4,387.50 |
| (ii.) Accommodation expenses | \$169.50 |
| (iii.) Airfares (total) | \$1,063.00 |

[4] Mr Rhodes provided submissions on behalf of the respondent in response to the applicant's submissions. He submitted that a reasonable and fair contribution toward the costs of the applicant was \$1,940.00 plus GST based on the following:

- (i.) Preparation for the hearing should not have taken longer than four hours.
- (ii.) Attendance at the hearing was four hours.
- (iii.) The respondent should not be required to carry the cost for Mr Roland choosing to engage Auckland counsel for a hearing in Queenstown and \$500.00 would suffice for travel and accommodation.

(iv.) A proposed or reasonable hourly rate for Mr Horrocks is \$180.00 per hour.

Analysis

[5] My notes reflect that the investigation meeting commenced in Queenstown at 10.30am. There was an adjournment for lunch at 1.40pm and the meeting resumed at 2.20pm and then continued until 6.10pm. The meeting took a full day.

[6] The hourly rate put forward by Mr Rhodes of \$180.00 per hour for a partner in an Auckland law firm may be somewhat on the light side. In any event, I consider that the legal fees incurred by the applicant overall were reasonable. It is now a matter of determining what proportion of those actual costs would be reasonable and just for the respondent to pay.

[7] There is considerable history with respect to this matter. There were some delays on the part of the applicant which caused Mr Rhodes to make an early application for costs which it was agreed would be reserved until after final determination of the matter. The respondent was late in producing relevant documents and some documents which could be termed crucial had been destroyed.

[8] I take into account both these matters.

[9] I accept that it was open for Mr Roland, although Auckland based since his dismissal, to have engaged local representation or Mr Horrocks could have instructed an agent to appear at the investigation meeting. Properly analysed though, this could well have meant the respondent would be facing a much higher claim than the airfares, given that there would have been some duplication of work required particularly with respect to briefing of evidence. There would also have been toll and facsimile costs. Mr Roland would have been required to travel anyway from Auckland and the location of the meeting in Queenstown may have also resulted in some travel costs for the local representative in any event. I take into account that Mr Roland had not lived in Queenstown since shortly after his dismissal in December 2000. As a result of his dismissal he was required to go back to Auckland and start up his business again. I am of the view that it would be fair for the respondent to meet the full cost of the airfares incurred in these circumstances and the accommodation.

[10] I am of the view that it is reasonable and fair for the respondent taking all matters into account to pay a 60% contribution toward the legal fees incurred by the applicant in the sum of \$2,632.50, together with the accommodation expenses in the sum of \$169.50 and the airfares of \$1,063.00.

[11] Mr Horrocks' letter of 5 August 2005 indicates that whilst the respondent said that it had paid Mr Roland holiday pay and car insurance these amounts have in fact not been paid. That matter may well have been attended to but if there are further issues with respect to holiday pay or car insurance I reserve leave for either party to come back to the Authority.

Determination

[12] I order Amalgamated Builders Limited to pay to Evert Roland the sum of \$3,865.00 being a contribution toward costs and disbursements incurred by him.

Helen Doyle
Member of Employment Relations Authority