

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 234A/08
5092822

BETWEEN ALAN WENZEL SCHOLLUM
Applicant

AND ORANGEWOOD LIMITED
Respondent

Member of Authority: Marija Urlich

Representatives: Bryce Quarrie, Counsel for Applicant
Nikki Dines, Counsel for Respondent

Submissions received: 4 August 2008 from Applicant
13 August 2008 from Respondent

Determination: 19 August 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 7 July 2008 (AA234/08) I declined Mr Schollum's claim for reimbursement of time in lieu.

[2] Costs were reserved and the parties invited to attempt to resolve this issue themselves. Those attempts have been unsuccessful and memoranda had been filed setting out the respective positions.

Orangewood

[3] In her memorandum to the Authority dated 4 August 2008 Ms Dines advised Orangewood's costs total \$26,809.88 (inclusive of GST) plus disbursements of \$765.62. She submits that a contribution to those costs of \$3000 plus GST and disbursements is warranted in light of the following:

- The respondent was wholly successful in defending the claim;

- Further evidence was filed six days before the first scheduled investigation meeting, resulting in further costs to the respondent;
- The investigation meeting took a full day;
- Further submissions were required, effectively extending the hearing to longer than one day; and
- The applicant failed to respond to the respondent's costs settlement offer.

Mr Schollum

[4] Mr Quarry submits that the Authority should order costs to lie where they fall:

- The investigation meeting took less than a day;
- The respondent's costs are high, given the nature of the case;
- Recognition should be given to the work and effort put in by the applicant to the respondent's business well beyond the call of duty; and
- The applicant had a genuine belief that he was entitled to the time in lieu payments claimed.

Determination

[5] Counsel referred me to *PBO Ltd v Da Cruz*¹ as setting out the appropriate principles to be applied by the Authority in exercising of its costs discretion. I accept these submissions.

[6] It is usual that costs follow the event and I find that an award of costs is warranted in this matter.

[7] There was a degree of complexity in the issues before the Authority. The events in question spanned a number of years, key disputes in the evidence had to be tested and resolved and distinct legal issues canvassed in submissions. I accept these complexities have put the respondent to additional cost.

¹ [2005] 1 ERNZ 808

[8] In these circumstances, accepting \$2000 to \$3000 as a usual notional daily rate in the Authority and given the investigation meeting took less than a full hearing day; I set the costs award at \$2000 plus \$300 for disbursements.

[9] **Mr Alan Schollum is ordered to pay \$2300.00 to Orangewood Limited in costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.**

Marija Urlich

Member of the Employment Relations Authority