

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 96A/10
5154344

BETWEEN

MICHAEL SEELEN
Applicant

A N D

ASH AIR (NZ) LIMITED
Respondent

Member of Authority: Helen Doyle

Representatives: Ian Thompson, Advocate for Applicant
Peter Macdonald, Advocate for Respondent

Submissions Received: 18 May 2010 from Respondent

Determination: 12 June 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 23 April 2010, I found that the applicant had been unjustifiably disadvantaged in his employment with the respondent and awarded him compensation. I reserved the issue of costs but noted that, in final submissions on behalf of the applicant, Mr Thompson had advised that the contribution sought towards the applicant's costs was \$3,500 together with \$70 being the filing fee. Costs were reserved therefore with an opportunity for Mr Macdonald to respond to Mr Thompson's application for costs.

[2] Mr Macdonald, on behalf of the respondent, duly lodged and served submissions as to costs. He submitted that there should be no increase in any cost award, as suggested by Mr Thompson, because of the need for a direction to mediation. He further submitted that the applicant's primary claim for unjustified dismissal was rejected and therefore that should be taken into account in assessing costs. He also submitted that the investigation meeting was approximately half a day

and the amount on that basis was excessive. Mr Macdonald submitted that a fair award of costs in the circumstances would be \$1,000.

Determination

[3] In exercising my discretion as to costs, I apply the principles that were held to be appropriate to the Authority and consistent with its functions and powers in the leading Employment Court judgment of *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808.

[4] A daily tariff for an investigation meeting in the Authority has now been recognised by the Employment Court as being in a range up to \$3,000. Such tariff is to be determined with respect to the particular circumstances in each case before the Authority.

[5] I intend to make an adjustment of \$600 to a \$3000 tariff because the investigation meeting was from 9.30am until 1.40pm so was less than a full day. I also take into account in making that adjustment that there were no complex legal or factual issues.

[6] Mr Macdonald submitted correctly that Mr Seelen was not found to be unjustifiably dismissed. In that respect, though, the disadvantage grievance found to be established was in the context of a redundancy termination. The nature of the grievance followed from the Employment Court judgment in *Simpsons Farms v. Aberhart* [2006] ERNZ 825 where the redundancy was found to be genuine but the process or how the employer went about making the decision was unfair. I do not find that any adjustment to costs is called for in those circumstances.

[7] I find that an adjustment should be made for the additional telephone conference required to direct the parties to mediation. I do not intend to make a significant adjustment. I have however assessed the adjustment as \$150 reflecting that the applicant incurred an additional cost by having Mr Thompson attend a telephone conference to determine the appropriateness of a direction to mediation.

[8] In all the circumstances therefore, and taking into account the adjustments, I find that a fair and reasonable award of costs is the sum of \$2,550 together with the filing fee of \$70.

[9] I order Ash Air (NZ) Limited to pay to Michael Seelen the sum of \$2,550 together with the filing fee of \$70 being costs and disbursements.

Helen Doyle
Member of the Employment Relations Authority