



[5] Mr Norton has advised of several 'without prejudice save as to costs offers' that were exchanged between the parties prior to the investigation. In a submission made on behalf of the employer, counsel Mr Wagg referred to a delay on the part of Mr Short advising of his refusal of the without prejudice offers.

[6] As the offers from the employer were all below the eventual amount that Mr Short was held entitled to recover from his claim, they are to be disregarded and the normal rules of costs will apply.

[7] The key principles have been set out in the judgment of the Employment Court in *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808.

[8] Mr Wagg noted that the reopening of the investigation only became necessary because of a misunderstanding arising out of information supplied by Mr Norton in submissions made to the Authority. Mr Wagg acknowledged his client's concession that it dismissed Mr Short, although it had continued to deny that until the investigation meeting began, and Mr Wagg noted correctly that the hearing had lasted only a morning. He submitted that \$500 was an appropriate level of costs for the employer to pay.

[9] This investigation was unnecessary as it should have been readily obvious from the employment agreement that the employer faced a difficult task rebuffing the claim of dismissal by relying on the fixed-term agreement argument. Nevertheless, it maintained right up until the first few minutes of the investigation meeting that it had not dismissed Mr Short. Once dismissal was conceded, an acknowledgement of lack of justification for it by the employer was inevitable in the circumstances.

[10] The employer's apparently tactical approach to the investigation wasted the time and money of Mr Short. Some account should be taken of this conduct in costs.

[11] The actual costs incurred by Mr Short were at a reasonable level for the type of investigation. The exercise is therefore to assess a reasonable contribution to those costs.

[12] In the circumstances I consider that an award of \$1,350 is appropriate to compensate Mr Short for the expense he was put to in proceeding to an investigation, although a brief and uncomplicated one.

[13] Pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000, Walton Special Vehicles and Conversions Limited is therefore ordered to pay \$1,350 to Mr Luke Short as costs, including disbursements and fees.

A Dumbleton  
**Member of the Employment Relations Authority**