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Perry v Tom Ryan Cartage Ltd CA 53A/07 (Christchurch) [2007] NZERA 524 (22 June 2007)

Last Updated: 15 November 2021

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

CA 53A/07

5049928

BETWEEN GLEN JAMES PERRY

Applicant

AND TOM RYAN CARTAGE LIMITED

Respondent

Member of Authority: James Crichton

Representatives: Ralph Webster, Advocate for Applicant

Dylan Marriott, Advocate for Respondent

Determination: 22 June 2007

COSTS DETERMINATION OF THE AUTHORITY

[1] The Authority resolved the employment relationship problem between these parties by allowing Mr Perry's claim of an unjustified dismissal but determining that he had contributed to the events complained of to the extent of 20%.

[2] Costs were reserved.

The Claim for Costs

[3] Mr Perry, through his advocate, seeks a contribution to costs in the sum of \$5,500. Mr Perry's actual costs amount to \$6,053.24. This amount includes a sum of \$248 in disbursements including airfares.

[4] For its part, Tom Ryan Cartage Limited seeks to limit the extent of its contribution to the sum of \$500. The submissions filed on behalf of Tom Ryan Cartage Limited make a number of observations about the unhelpful approach allegedly adopted by the advocate for Mr Perry. I again

make the observation, as I did in the substantive determination, that both advocates have an obligation to engage with each other on a professional basis and each must bear some of the blame for their inability to develop a relationship the one with the other.

[5] This is particularly so in relation to the matter of whether a mediation of the matters in contention between the parties might have assisted in resolving matters without the necessity of a hearing before the Authority.

[6] In that regard, as I indicated in the substantive determination, I declined to order the parties to mediation on the basis that there seemed no realistic prospect that their advocates could engage with each other to such an extent as to allow a reasonable prospect of settlement. Difficulties continued during the investigation meeting, and even now seem to remain.

The Legal Principles

[7] The recent decision of the Full Court in *PBO Ltd v. Da Cruz* (AC2A/05 dated 9 December 2005) sets out the relevant principles. In particular, the Court makes clear that the principles which the Authority has traditionally applied in setting awards of costs are appropriate and that the tariff-based approach is proper so long as it is not applied arbitrarily and without regard to the particular merits of a case.

Discussion

[8] This was a matter which was dealt with over two days but it would not be true to say that these were two full days. On the first day the investigation meeting began at 10:30 am and concluded at 1:30 pm.

[9] In the normal course of events, the Authority might award costs of up to \$5,000 in respect of a two day hearing, but in the particular circumstances of this case, a more modest award is, in my judgment, appropriate. In fact, in terms of elapsed time, this matter took only 2 hours more than the Authority's span of sitting hours for a day long hearing.

Determination

[10] In the circumstances, I think an appropriate award of costs would be in the sum of \$3,000 and I order that sum be paid to Mr Perry by Tom Ryan Cartage Limited as a contribution to his costs.

[11] In making that order, I do not take account of the 20% contribution which I considered Mr Perry had incurred in respect of the personal grievance. The Authority does not generally reflect matters of contribution in a costs award.

J Crichton

Member of the Employment Relations Authority