

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 41A/09
5127668

BETWEEN JOHN WILLIAM TE AMO
 Applicant

AND BECON LIMITED
 Respondent

Member of Authority: Philip Cheyne

Representatives: John Shingleton, Counsel for the Applicant
 Denis O'Rourke, Advocate for the Respondent

Submissions Received: 29 April 2009 from Applicant
 28 April 2009 from Respondent

Determination: 11 June 2009

DETERMINATION OF THE AUTHORITY

[1] In a determination dated 6 April 2009 I dismissed Mr Te Amo's personal grievance and arrears claims and reserved the question of costs to be determined following an exchange of memoranda. I have now received these memoranda and this determination resolves the question of costs.

[2] In the substantive proceedings Mr Te Amo alleged that he had been employed as an employee by Becon Limited, a company incorporated to operate a business venture in which Mr Te Amo was one of the principals. However I found that his relationship with Becon Limited was never that of employment and dismissed his claims.

[3] Becon Limited seeks an order of costs amounting to \$9,706.60. That represents its full costs for 72.6 hours preparing for and attending an investigation meeting that took a day and a half. Time is charged at \$100.00 per hour and \$120.00

per hour, there is a claim for \$54.10 photocopying and GST. The claim helpfully identifies what was done, when it was done and how much time it took.

[4] Several points emerge from the details provided. First, Becon Limited will be registered for GST. The GST paid by it is also claimable so should be disregarded for present purposes: see for example *Andrew Yong t/a Yong & Co Chartered Accountants v Chin*, unreported, Couch J, 7 Sep 2007, AC 37A/07 where the Employment Court made it clear that GST is only assessable as part of legal costs when it is paid by a person who is not GST registered. Time and costs for mediation and arranging a part settlement of issues is not relevant for present purposes so that brings down the relevant costs to a little under \$8,000.00.

[5] Counsel for Mr Te Amo refers me to *PBO Ltd (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808 to support the principles that costs awards by the Authority should be modest and are frequently assessed on a daily tariff basis. In that case the Court referred to 2005 figures that indicated that the majority of costs awards for a one day investigation meeting were between \$2,000.00 and \$2,500.00 and the Court approved as a starting point a daily rate of \$2,000.00. There was also reference to public information about taking cases to the Authority that indicated most costs awards were within the range of \$1,000.00 to \$3,000.00 per day. I am also referred to *South Tranz Limited v Straight Limited* unreported, Colgan CJ, Shaw and Couch JJ, CC 3/08, 8 April 2008 to support the contention that \$2,000.00 per day is a reasonable starting point. In that case the Employment Court ordered costs of \$3,000.00 for a day and a half investigation meeting in the Authority. More recently however the Employment Court has taken the position that a daily tariff of \$3,000.00 is an appropriate starting point for costs awards in the Authority rather than the upper end of the scale: see *Terson Industries Limited v Aaron Loder* unreported, Shaw J, WC 10/09, 30 April 2009 which also refers to *Johnson v Gilligan Business School Ltd*, unreported, AC 14/09, 3 April 2009 and *Chief Executive of the Department of Corrections v Tawhiwhirangi (No 2)* [2008] ERNZ 73. I should take \$3,000.00 per day as an appropriate starting point.

[6] There is no reason to depart from the daily tariff based approach to determining costs in the present case; nor do I see any reason to increase or reduce the above mentioned daily tariff. Accordingly I order Mr Te Amo to pay costs of \$4,500.00 to Becon Limited.

[7] Mr Te Amo has challenged the substantive determination and Counsel seeks the return of the originals of documents provided during the Authority's investigation. Provided there is no reasonable objection on behalf of Becon Limited, the senior support officer should return such originals to Counsel. Leave is reserved to deal with any reasonable objection.

Philip Cheyne
Member of the Employment Relations Authority