

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 39
5465274

BETWEEN VECTOR LIMITED
 Applicant

A N D BRUCE TAPLIN
 Respondent

Member of Authority: James Crichton

Representatives: Stephen Langton, Counsel for Applicant
 Aishleen Sluiters, Counsel for Respondent

Investigation Meeting: On the papers

Submissions Received: 23 December 2015 from Applicant
 20 January 2016 from Respondent

Date of Determination: 10 February 2016

**COSTS DETERMINATION OF
THE EMPLOYMENT RELATIONS AUTHORITY**

Introduction

[1] This determination deals with an application by the applicant (Vector) for costs against the respondent (Mr Taplin) because an adjournment was required to the investigation meeting that I had set down and timetabled and that adjournment caused Vector to suffer additional legal costs.

[2] The matter was canvassed in a telephone conference that I convened with counsel on 4 November 2015 as a consequence of which the adjournment was granted but costs were reserved.

[3] Counsel have now provided the submissions that I sought in relation to the matter and this determination deals with that application for costs, and nothing else.

The application for costs

[4] Vector say that they have suffered additional costs because of a request for additional time by Mr Taplin to file and serve his statements of evidence, the effect of which, if granted, would have been to require the adjourning of the investigation meeting set down to deal with the substantive issues.

[5] The applicant says that the nature of the proceeding had been clear from the statement of problem, and that counsel had agreed a timetable at the suggestion of the Authority in anticipation of the investigation meeting.

[6] In accordance with that timetable, the applicant filed and served its statements of evidence and, although there was an intimation of difficulty from the respondent's perspective within a week of those statements of evidence being available, it was not until over two weeks after Vector's evidence was available to Mr Taplin that he indicated he would need an extension in respect to the filing of his evidence.

[7] Put shortly, Vector's position can be summarised by the contention that Mr Taplin waited until Vector had filed and served its evidence before he took any steps in respect to the preparation of his response. Given the matter had been on foot for some months, it is suggested that that approach is *high handed*.

[8] Costs of \$1,675.50 exclusive of GST are sought. Those costs relate entirely to Vector's opposition to the adjournment application and the costs incurred in preparing Vector's submissions.

The response

[9] Mr Taplin says that his behaviour throughout has been appropriate in all the circumstances, that he had no option but to apply for an adjournment and that that application was in all the circumstances reasonable.

[10] In particular, Mr Taplin says that the evidence filed and served by Vector was voluminous, covering three full volumes and was not paginated or tabbed for ease of reference.

[11] Second, Mr Taplin says that he now lives outside of Auckland and so it was necessary to get that material to him and he dealt with it as quickly as he was able but of course as he is employed full-time, that process was itself time consuming.

[12] It became clear from Mr Taplin's assessment of the evidence, apparently, that he would need to have access to an affidavit that had been provided subject to a counsel to counsel undertaking. That fact was brought to counsel for Vector's attention and a response to the request that the undertaking be varied was not received for seven days. And it was another three days before the original undertaking was released.

[13] Nor does Mr Taplin accept that the claim against him was foreshadowed *in all respects* (the phrase used in Vector's submissions) and therefore nothing in Vector's evidence should have come as a surprise. As Mr Taplin puts it in his submission ... *the respondent could not have anticipated the extent of the evidence filed or the level of detail that would be required to respond to this.*

[14] Finally, Mr Taplin notes that as the costs incurred by Vector were exclusively a consequence of its decision to resist the request for an adjournment, had it not opposed the adjournment, it would have suffered no loss.

Determination

[15] The law in costs fixing in the Authority is well settled and need not be recited again here. Those principles include the fact that costs usually follow the event, that the Authority has a discretion as to whether award costs and if so, at what level, but that fundamentally the purposes of a costs award is to require a party that has caused another party to incur legal costs to contribute to the costs so incurred.

[16] In the present case, I think it is telling that Mr Taplin correctly observes that Vector would not have incurred any costs at all if they had simply accepted that an adjournment was necessary in order to give him a proper opportunity to respond to the detail of their allegations. This is because Vector only seeks recovery of costs pertaining to their resisting Mr Taplin's adjournment application and its associated timetable changes.

[17] But Vector can say they are entitled to defend their corner, that they are the applicant and they want the matter dealt with in the Authority as soon as is reasonably possible and therefore opposing the adjournment is a proper course.

[18] However, in order for Vector to be successful in persuading me that they should have an award of costs in this matter, I would need to be satisfied that the adjournment was required in effect because of some default by Mr Taplin. I do not accept that is the position at all.

[19] I think, in all the circumstances, Mr Taplin's request for an adjournment was a reasonable request; had it not been I would not have granted it. I accept Mr Taplin's point that the nature of the evidence is extensive and while it may be perfectly true that all of the evidence is contemplated by the statement of problem, that still does not deal with the point that Mr Taplin must respond to each significant allegation in the evidence is if he is to successfully resist Vector's claim.

[20] I do not think it reasonable to expect Mr Taplin to somehow predict what Vector's witnesses might say and certainly it is unreasonable to expect that, given the detail of the evidence that is before the Authority.

[21] Moreover, I think I am entitled to take notice of the fact that the evidence filed for Mr Taplin, which is now before me as I write this determination, is itself voluminous and that suggests that he has diligently applied himself to dealing with the various allegations made against him by Vector.

[22] Finally, I am also persuaded that as soon as Mr Taplin received Vector's evidence (which they correctly identify was filed on time) he, with the assistance of his counsel, diligently set about preparing the response to it. There is no evidence before me that there was any unreasonable delay in Mr Taplin engaging on the matter, notwithstanding the tyranny of distance (Mr Taplin no longer living in Auckland).

[23] Moreover, it is the case that Mr Taplin's counsel had to seek a variation of the counsel to counsel undertakings that had previously been provided and there was a delay in that being attended to by Vector's lawyers. No criticism is made of that by me, nor ought any to be read into my referral to the matter; I simply make the point there was a delay which in the context of the life of a busy legal practitioner, would hardly be worth commenting on save for the point that in this circumstance, time was running on a timetable that I had previously set.

[24] In all the circumstances, I decline to make an award of costs against Mr Taplin and in favour of Vector; I am satisfied that in respect to this particular matter, costs should lie where they fall.

James Crichton
Chief of the Employment Relations Authority