

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 431
5333164

BETWEEN EDWARD WHALLEY
 Applicant

AND RAYNMAC HOLDINGS
 LIMITED TRADING AS
 CARS AND MORE
 Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person
 Richard Shand, Counsel for Respondent

Submissions received: None from Applicant
 04 August 2011 from Respondent

Determination: 04 October 2011

COSTS DETERMINATION OF THE AUTHORITY

A Mr Edward Whalley is ordered to pay Raynmac Holdings Limited trading as Cars and More \$2,500 towards its legal costs.

[1] In a determination dated 8 July 2011¹ the Authority (Member Campbell) held that the real nature of the relationship between the parties was a contract of service. Because the parties were not in an employment relationship, the Authority held that it did not have jurisdiction to hear Mr Whalley's personal grievance claim.

[2] The parties were encouraged to resolve costs by agreement, and a timetable was set in case agreement was not reached. The respondent filed costs submissions but the applicant did not.

¹ [2011] NZERA Auckland 297

[3] Pursuant to clause 16, Schedule 2 of the Employment Relations Act 2000 (“the Act”), I now determine costs in respect of this matter.

[4] The status issue was dealt with by the Authority as a preliminary issue. By agreement with the parties, that issue was determined on the papers.

[5] The Authority held a timetable conference during which timetabling directions were made regarding the filing of statements, relevant documentation, and submissions on the status issue.

[6] Although an investigation meeting was not held, the respondent says it was put to considerable cost in defending the applicant’s application to the Authority. Mr Shand appended to his submissions invoices which established that the respondent had incurred legal fees of \$5,850.85. The respondent sought to recover its full costs.

[7] This is not an appropriate case for indemnity costs. Costs are to be awarded based on the Authority’s usual notional daily tariff based approach. The principles relating to an award of costs by the Authority are set out in the full Employment Court’s decision in *PBO Limited (formerly Rush Security Limited) v Da Cruz*² and are so well known I need not repeat them.

[8] The respondent submitted that the manner in which the applicant pursued his claims unnecessarily increased its costs. It says the nature of the applicant’s claim was unclear and that additional information he filed raised further allegations and issues the respondent had to expend time and money responding to.

[9] I have reviewed the Authority’s very thick file for this matter and it is clear both parties filed extensive evidence. The applicant’s evidence was over an inch thick and the respondent’s was not significantly less than that.

[10] I consider that this is an appropriate matter in which to award costs equivalent to what would have been awarded for a one day investigation meeting. I have therefore started with a notional daily tariff of \$3,000.

² [2005] ERNZ 808

[11] I have considered whether there were any factors which warranted increasing the notional daily tariff and I have concluded there are not.

[12] I have also considered whether there are any factors which warrant decreasing the notional daily tariff, and I have concluded there is one. This matter was dealt with on the papers so the respondent did not incur the costs of appearing at an investigation meeting. I therefore consider it appropriate to decrease the notional daily tariff by \$500 to reflect that.

[13] I have then stood back and considered whether an award of \$2,500 costs in the respondent's favour would do justice between the parties, and I am satisfied that it does.

[14] Mr Whalley is ordered to pay the respondent \$2,500 towards its actual legal costs.

Rachel Larmer
Member of the Employment Relations Authority
(*Per clause 16, Schedule 2, ERA 2000*)