

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Robert Whitehouse (Applicant)  
**AND** Moorhouse Construction Limited (Respondent)  
**REPRESENTATIVES** Jeff Goldstein, Counsel for Applicant  
Hans Van Schreven, Counsel for Respondent  
**MEMBER OF AUTHORITY** Paul Montgomery  
**SUBMISSIONS RECEIVED** 24 October 2006  
30 October 2006  
**DATE OF DETERMINATION** 24 November 2006

**COSTS DETERMINATION OF THE AUTHORITY**

[1] In a determination released to the parties on 28 July 2006, I found the applicant had a personal grievance and reserved costs. Counsel for the parties have been unable to agree on the issue of costs and have lodged their respective memoranda with the Authority for determination.

[2] For the applicant, Mr Goldstein submits that the principles set out in *PBO Ltd (formerly Rush Security Ltd) v da Cruz* [2005] 1 ERNZ 808 are applicable when the Authority is considering costs. Further, he submits that when exercising its discretion in a costs setting, the Authority needed to be mindful of principles including the way in which the case was conducted, the conduct of the parties, the importance of the case to the parties, the amount of time required for effective preparation, whether arguments lacking substance were advanced or whether unduly technical or legalistic points were needlessly taken and also the actual costs incurred.

[3] Counsel submits that while the hearing was completed in a day it was apparent that the respondent had failed to meet its obligations to the applicant and the hearing was unduly lengthened by the respondent's attempts to avoid that obligation. Counsel also submits that his client bore actual costs of \$5,500 plus GST and also incurred the disbursement of the filing fee for which he seeks reimbursement.

[4] Finally, counsel submits that in all the circumstances the applicant should receive the sum of \$4,000 plus GST plus disbursements as a contribution towards his costs.

[5] In replying to the applicant's submissions, Mr van Schreven, on behalf of the respondent, does not dispute that the Authority has other than power to award costs and accepts that that power is discretionary.

[6] Mr van Schreven submits that the Authority needs to take into account in this particular matter the fact that the parties had, in good faith, attempted mediation; the respondent had acted reasonably in its challenge to and defence of the claim; and that the legal arguments advanced, and in particular

those in relation to contribution and the loss of income and so forth, were reasonably advanced and fairly open to contention.

[7] Mr van Schreven submits that the hearing was not unduly lengthened by the respondent's attempts to avoid any obligation to the applicant and that it was reasonable for the respondent to challenge and test matters of that type.

[8] Counsel states that the respondent's actual costs incurred had been \$7,875.00 inclusive of GST and accepts that a reasonable award to the applicant is appropriate in the circumstances. He submits that an award at the level of quantum sought by the applicant in his submissions would be unreasonable and submits that an award of \$2,500 plus GST and disbursements would, in all the circumstances, give fair recognition to the factors referred to in both his and the applicant's submissions.

[9] I have no difficulties in following the principle that costs should follow the event. Given that the investigation meeting was completed in a day, counsel for the respondent's probing and testing the issue of contribution, although not upheld in the Authority's determination, was a course of action he was entitled to take on behalf of his client.

[10] Having considered the matters raised by both counsel, I think it just that the respondent pay the applicant the sum of \$2,800 plus GST as a contribution to his reasonably incurred costs. Further, I order the respondent to reimburse the applicant the \$70 filing fee incurred by him in initiating these proceedings.

Paul Montgomery  
Member of Employment Relations Authority