

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Ian Whyte (Applicant)
AND DG Services Limited (Respondent)
REPRESENTATIVES Paul Pa'u, Counsel for Applicant
Kathryn Burson for Respondent
MEMBER OF AUTHORITY Y S Oldfield
SUBMISSIONS 15 June, 7 July 2005
DATE OF DETERMINATION 23 August 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

- [1] In a determination dated 19 May 2005 I concluded that Mr Whyte had not established that he had a personal grievance and invited the parties to discuss the issue of costs between themselves. They have been unable to agree and I now proceed to determine the issue.
- [2] The respondent advises that it incurred costs of \$16,508.25 (inclusive of GST) and disbursements of \$539.10. Copies of the relevant invoices were supplied. The respondent says that these costs were reasonable and were increased through the actions of Mr Whyte, in particular the giving of 24 hours notice that he was overseas and would not attend an investigation meeting scheduled for August 2004.
- [3] It also advises that Mr Whyte rejected two Calderbank letters. The first was made in July 2004 (before the respondent had incurred any legal costs) and was an offer to settle the grievance for a payment of \$3,491.36 (eight weeks wages.) The second was made by the respondent's solicitors on 11 November and was for \$4,000.00 without deduction. This offer was made after the lodging of witness statements, a time when a realistic assessment could be made of litigation risk. The respondent says that acceptance of either of these offers, but especially the first, would have avoided significant costs.
- [4] The respondent submits that it would be reasonable for the respondent to make a two thirds contribution to its actual costs and therefore claims costs of \$11,005.50 plus disbursements.
- [5] Through Counsel the applicant responded that the costs sought by the respondent are excessive and asserted that the adjournment of the first meeting was not prejudicial and should occasion only a small award of costs. Mr Pa'u suggested that a reasonable award of costs in this matter should be \$1,500.00 plus disbursements, given that the meeting lasted a little under a day. He also submitted that Mr Whyte currently earns \$40,000.00 pa and would be caused severe hardship by an award of the level sought.

Determination

- [6] I share Mr Pa'u's view that the costs incurred by the respondent appear very high given the relatively straightforward nature of the employment relationship problem. I begin therefore by estimating what a reasonable level of costs would have been.
- [7] The investigation meeting was less than a day although it was followed by the taking of further evidence by telephone conference at a later date giving the equivalent of a day's time in all. I consider (given the nature of the case) that a multiplier of two will give a reasonable estimate of the total time required to be spent in preparing for and attending the meeting. This gives sixteen hours. I do not know Ms Burson's charge out rate but if I apply a rate of \$250.00 (for a practitioner of some experience) I arrive at a figure of \$4,000.00.
- [8] A two thirds contribution is a reasonable starting point for consideration of costs. This gives \$2,666.00. There were also disbursements to consider. Given those, the inconvenience to the respondent of the late adjournment, and the offers made to settle I consider that figure should be rounded up to \$3,000.00.
- [9] Mr Whyte is ordered to pay to DG Services Ltd the sum of \$3,000.00 as a contribution to its costs.**

Y S Oldfield
Member of Employment Relations Authority