

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2013] NZERA Christchurch 14
5349928

BETWEEN DAVID WILLIAMS
 Applicant

AND TALLEYS GROUP LIMITED
 Respondent

Member of Authority: Christine Hickey

Representatives: Mr Williams in person
 Raewyn Gibson, advocate for the respondent

Costs submissions
received: 26 October 2012 from the respondent
 None received from the applicant

Determination: 21 January 2013

COSTS DETERMINATION OF THE AUTHORITY

A. David Williams to pay Talleys Group Ltd \$2600.00 in costs.

[1] On 28 September 2012 I issued a determination dismissing Mr Williams' claims of unjustified dismissal, unjustified disadvantage and breach of good faith by Talleys. I reserved costs. Talleys has applied for its legal costs.

[2] Mr Williams was given an opportunity to respond but did not do so in writing. He was also contacted by telephone and indicated that he would not be making any submission on the issue of costs.

[3] Clause 15 of Schedule 2 of the Act confers a wide discretion on the Authority to award costs and expenses. This discretion is to be exercised judicially and in accordance with principle.

[4] Each case is to be treated in light of its own circumstances. The primary purpose of costs is to compensate the successful party. Mr Williams did not succeed in any of his claims.

[5] The principles the Authority follows in considering costs applications are as set out in *PBO Limited v Da Cruz*¹, a judgment of the Full Court of the Employment Court, at page 819. These principles include:

- a. The Authority has a discretion on whether to award costs and if so what amount.
- b. The discretion must be exercised in accordance with principle and not arbitrarily.
- c. The jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction.
- d. Equity and good conscience must be considered on a case by case basis.
- e. Costs should not be used as a punishment or an expression of disapproval of the unsuccessful party's conduct although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.
- f. It is open to the Authority to consider whether all or any of the parties' costs were unnecessary or unreasonable.
- g. Without prejudice offers can be taken into account.
- h. Awards of costs will be modest.
- i. Frequently costs are judged against a notional daily rate, which is currently \$3,500.00.
- j. Costs generally follow the event; that is, the successful party's costs are likely to be ordered paid by the unsuccessful party.

¹ [2005] ERNZ 808

k. The nature of the case can also influence costs. That means that the Authority orders that costs lie where they fall in certain circumstances.

[6] I have had regard to these key principles when fixing costs in this matter.

[7] The actual costs incurred by Talleys were \$8,960.00. The costs do not include travel costs for Talleys' representative. The costs are reasonable. The investigation meeting took approximately $\frac{3}{4}$ of a day on 7 August 2012.

[8] There are no special circumstances that suggest that I should award an amount of greater than the usual daily amount of \$3500.00. In light of the fact that the hearing took less than a full day I consider that Mr Williams should pay Talleys \$2600.00.

Christine Hickey
Member of the Employment Relations Authority