

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 468
5394558

BETWEEN WARREN ALBERT WILTON
Applicant

AND CARTER HOLT HARVEY
LIMITED
Respondent

Member of Authority: T G Tetitaha

Representatives: J Forret, Counsel for the Applicant
D France, Counsel for the Respondent

Submissions Received: 31 July 2013 from the Respondent
12 August 2013 from the Applicant

Determination: 10 October 2013

COSTS DETERMINATION OF THE AUTHORITY

A. Warren Wilton is ordered to pay Carter Holt Harvey Limited costs of \$6,930 by instalments of \$50 per week starting 10 November 2013.

[1] Carter Holt Harvey Limited (CHH) seeks costs following the successful defence to a personal grievance by Warren Wilton¹. It seeks a contribution towards costs of \$12,250 for three days' hearing time at the daily notional tariff of \$3,500 and a further half day (\$1,750) for preparation of costs submissions.

[2] Mr Wilton seeks a reduction in the daily tariff of \$3,500 by 50% and time to make payment.

Issues

[3] The following issues are to be determined:

- (a) What is the starting point for assessing costs?
- (b) Are there any factors which warrant adjusting costs?

¹ *Wilton v. Carter Holt Harvey Ltd* [2013] NZERA Auckland 303

What is the starting point for assessing costs?

[4] The starting point for costs in the Authority is its notional daily rate of \$3,500. This matter occupied three days of hearing time. Accordingly the starting point for assessing costs is \$10,500.

[5] Ordering further costs for submissions are unusual. The notional daily rate covers all preparation including costs submissions. No further adjustment is warranted.

Are there any factors which warrant adjusting costs?

Factors which warrant a reduction in costs

[6] Costs awards must take into account the ability to pay². Mr Wilton is unemployed, receives superannuation and deposes to no prospect of work in the near future. His income is sufficient to cover his living needs. He incurred legal costs of \$39,902 plus GST.

[7] Costs awards have been reduced due to undue hardship³. On the limited information before the Authority, there is sufficient basis to reduce costs by one third having regard to equity and good conscience. Accordingly the costs shall be reduced to \$6,930.00.

Factors which warrant an increase in costs

[8] There are no factors warranting an increase in the starting point for costs.

[9] No issue has been taken about payment by instalments. Accordingly the costs shall be met by instalments of \$50 per week starting 10 November 2013. Warren Wilton is ordered to pay Carter Holt Harvey Limited costs of \$6,930 by instalments of \$50 per week starting 10 November 2013.



T G Tetitaha
Member of the Employment Relations Authority

² *Richardson v. Board of Governors of Wesley College* [1999] 2 ERNZ 199, 229

³ *Burns v. Media Design School Ltd* (ENC 17/11/09); *Koia v Attorney-General (No 2)* [2004] 2 ERNZ 274 (EmpC)