



## **The submissions**

[4] Ms Shakespeare referred to the leading case of *PBO Ltd (formerly Rush Security) v. Da Cruz* [2005] 1 ERNZ 808 and the principles in the judgment for the Authority in exercising its discretion as to costs. She submits that a reasonable award for costs for an investigation meeting which took a full day and included hearing from five witnesses and provision of submissions would be \$2,500.

[5] Mr McKenzie accepts that this is a case where costs should follow the event in the normal course, but submits that the applicant's financial circumstances and an unmeritorious argument pursued by the respondent that there was no dismissal means that a nil or token costs award would be in order. Mr McKenzie submits that the applicant, after paying rent of \$430 per week has to meet other costs of food and living expenses from a total income of \$520 per week from ACC.

## **Determination**

[6] There is no good reason why costs should not follow the event in this case. Ms Shakespeare's claim for \$2,500 is reasonable in all the circumstances even taking into account the argument as to whether there was or was not a dismissal which did not occupy too much time. In the recent Employment Court judgment of *Terfon Industries Ltd v. Aaron Loder* (WC10/09, 30 April 2009) Judge Shaw said at para [45] that:

*The Court has recently observed that, given the passage of time since the PBO case, the tariff of \$3,000 per day can be considered an appropriate starting point for costs awards in the Authority, rather than the upper end of the scale.*

[7] I do need to consider the applicant's financial circumstances and his ability to meet such an award of costs as claimed on the respondent's behalf in exercising my discretion as to costs. There is always a risk in any litigation that a party may be unsuccessful and therefore required to meet some of the costs of the other party. It is recognised in the Authority that costs awarded are usually modest and therefore unlikely to compensate the successful party for their full or close to full costs.

[8] In this case, the respondent has been put to considerable cost in defending the applicant's claim and had taken a number of steps earlier in good faith, including attending at mediation, to try to resolve matters before the investigation meeting.

[9] It is very clear to me, however, that the applicant would struggle to make a payment of the amount of \$2,500. Even if, as would seem to be inevitable, the respondent was to accept that payment take place over time, the applicant could only afford, on the figures provided by Mr McKenzie, a very modest weekly or monthly sum and it could take years to satisfy such an award.

[10] I am not persuaded, however, that there should not be any award at all. Given the applicant's financial circumstances, I have decided in this case, in exercising my discretion as to costs, to make an award for a modest sum of \$1,000.

[11] I order X to pay to Y the sum of \$1,000 being costs.

Helen Doyle  
Member of the Employment Relations Authority