

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 21A/10
5166039

BETWEEN

KEVIN YONG
Applicant

AND

THE O'BRIEN GROUP LTD
Respondent

Member of Authority: Dzintra King

Determination: 09 June 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] The applicant, Mr Kevin Yong, was unsuccessful in his personal grievance claim. The parties have been unable to agree costs. The respondent now seeks costs. The applicant did not file a memorandum regarding costs.

[2] The respondent has incurred legal costs of \$28,799 (excluding GST) and disbursements of \$647.82.

[3] The criteria for awards of costs are set out in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808. The respondent says those relevant to this case are that costs are discretionary, conduct which increases costs unnecessarily can be taken into account, costs generally follow the vent and are frequently judged against a notional daily rate.

[4] The notional daily rate is in the vicinity of \$2,000 to \$3,000 but can be varied according to the particular characteristics of the case.

[5] The respondent seeks an award of \$5,000 plus GST and disbursements. This is on the basis that the claim was totally without merit, the investigation took a full day and was aided by the respondent's careful attention to detail in the preparation

and presentation of its case. The respondent tried to reduce costs by dealing with submissions on the day of the hearing but the applicant chose to file 14 pages of written submissions after the hearing and the respondent incurred costs in filing written submissions in reply. The respondent was forced to commit significant legal resources and incur considerable legal fees to defend the claim.

[6] The respondent is entitled to a reasonable contribution to its reasonably incurred costs. This was not a case where there were circumstances that would necessitate an increase in the notional daily rate. The applicant is to pay the respondent the sum of \$3,500 plus disbursements of \$647.82.

Dzintra King

Member of the Employment Relations Authority