

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Adrian James Sprott (First Applicant)  
AND Centre For Advanced Medicine Ltd (Second Initiating party)

**AND** Centre For Advanced Medicine Ltd (First Respondent)  
AND Adrian James Sprott (Second Responding party)

**REPRESENTATIVES** Timothy Allan, Counsel for Applicant  
Gerard Curry, Advocate for Respondent

**MEMBER OF AUTHORITY** Marija Urlich

**MEMORANDA RECEIVED** 3, 25 May, 12, 16 December 2005 and  
16 January 2006

**DATE OF DETERMINATION** 11 May 2006

**DETERMINATION OF THE AUTHORITY AS TO COSTS**

[1] In a determination dated 25 February 2005 I declined the respondent's application for removal. In a determination of the substantive matter dated 4 October 2005 I found Dr Sprott's dismissal was unjustified. With regard to both matters, costs were reserved, and the Authority has not moved to determine this issue until the substantive matter was completed. I record that the parties' have unsuccessfully attempted to settle costs themselves.

**(i) Removal application**

[2] Mr Allen, counsel for Dr Sprott, filed a memorandum advising the legal costs incurred by Dr Sprott in relation to the removal application totalled \$2,109.37. He seeks a contribution to those costs towards the higher end of the costs spectrum.

[3] Mr Curry, counsel for CAM, has submitted that costs should not be used as a deterrent or to oppress. He submits that the respondent was exercising its statutory rights in applying for removal to the Court and should not be punished for that application's lack of success.

[4] As the successful party Dr Sprott is entitled to a contribution to the costs incurred in relation to the removal application. These costs were incurred as a consequence of CAM's application for removal. That application was unsuccessful on all grounds and, in such circumstances, the unavoidable conclusion is that Dr Sprott has incurred costs unnecessarily. Those costs were relatively modest given that an investigation meeting was convened to hear parties' argument.

[5] Applying the principles set out in *PBO Limited v Da Cruz* (AC2A/05, 9 December 2005) I set CAM's contribution to Dr Sprott's costs at \$1200 and order accordingly pursuant to clause 15 of schedule 2 of the Employment Relations Act 2000.

**(ii) Personal grievance**

[6] Mr Allen seeks a substantial contribution to legal costs incurred by Dr Sprott on the following grounds:

- Dr Sprott's application was successful in all aspects but for the claim for future earnings;
- CAM has adopted an approach of "litigation by attrition" unsuccessfully and unnecessarily extending the investigation and causing further costs to be incurred; and
- A costs award of less than 80% of actual costs incurred would unjustly render the awards made in favour of Dr Sprott illusory.

[7] Dr Sprott's actual legal costs are \$75,056.15, of which he seeks 80%, being \$60,044.92.

[8] Mr Curry submits:

- Dr Sprott's claim for awards totalling \$400,000 was substantially unsuccessful; and
- In light of the extent of awards sought CAM was obliged to vigorously defend Dr Sprott's application.

[9] The principles set out in *Da Cruz* (supra) are applicable to this application for costs.

[10] In a costs setting the Authority is very often balancing its usual practise of making modest costs awards and the undesirability of substantive awards being rendered nugatory because they are absorbed by legal costs. Dr Sprott's actual legal costs exceed the substantive awards of \$61,000(gross) made in his favour.

[11] There can be no doubt that the matters before the Authority were very important to both parties and their conduct through the investigation reflected this. Applications made before other jurisdictions are not relevant to this determination. I do not know what the parties' motivations were and it would be unhelpful for me to speculate.

[12] Given the particular circumstances of this case, the level of preparation by the parties and the amount of evidence which was canvassed in detail during the investigation meeting I set a notional daily rate of \$4000. The investigation meeting ran for two full days with a further half day for the presentation of closing submissions. Multiplying the total investigation time by the notional daily rate gives total notional reasonable costs of \$10,000.

[13] Dr Sprott is awarded a contribution to reasonable costs incurred of \$8,000 plus a contribution to disbursements of \$500. Disbursements were not separately itemised. However, given the volume of photocopying required to comply with requests for documents, this figure seems reasonable.

[14] CAM is ordered to pay the sum of \$8,500 to Dr Sprott pursuant to clause 15 of schedule 2 of the Employment Relations Act 2000.

Marija Urlich  
Member of Employment Relations Authority