

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA147A/08
5082073

BETWEEN PHILP MARDELL
Applicant

AND EDWARDS DUNLOP (NZ)
LIMITED T/A BJ BALL
PAPERS
Respondent

Member of Authority: Dzintra King

Representatives: Applicant In Person
John Murdoch, Advocate for Respondent

Memoranda Received: 19 May 2008 from Respondent
2 June 2008 from Applicant

Determination: 09 October 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] The applicant, Mr Philip Mardell, was unsuccessful in his claim. The respondent seeks costs.

[2] The respondent has incurred legal fees of \$7,750.00 plus GST. This is the actual cost incurred for preparation and representation, being 31 hours' work. The respondent also seeks \$250 in disbursements being secretarial charges, postage and courier, parking and travel costs.

[3] The respondent made references to Mr Mardell's behaviour and submitted that this should result in a reimbursement of the respondent's full legal costs.

[4] The applicant says that an award of more than \$2000 would cause hardship as he is a student in part time employment.

[5] The principles applicable to an award of costs in the Authority have been set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808. The

Full Court set out a number of principles including that costs generally follow the event, are frequently judged against a notional daily rate and that awards will be modest. An award of costs is discretionary but the discretion is to be exercised accordance with principle and not arbitrarily. Costs are not to be punitive and will generally be modest. The conduct of the parties can also be taken into account.

[6] The behaviour to which Mr Murdoch refers is behaviour which resulted in a finding against the applicant. It cannot be used again to penalise the applicant in a costs setting. It was not conduct which increased costs unnecessarily.

[7] This was not a complex legal matter. I see no reason to depart from a normal costs award. The applicant was unsuccessful and has to pay a reasonable contribution to the respondent's reasonably incurred costs. The hearing took less than a full day. The applicant is to pay the respondent the sum of \$2,000 in costs.

[8] As to disbursements, although I was given an indication of what they were, no specific figures were provided. I would expect secretarial services to be included in the representative's hourly fee of \$250. Mr Murdoch is based in West Harbour so it is difficult to see how travel costs have been incurred, apart from the normal running cost of a vehicle. Given the lack of specificity, I decline to award any disbursements.

[9] A related matter which is of considerable concern is an email sent by Mr Murdoch to Mr Mardell on 20 May 2008 after the parties had been unsuccessful in attempting to resolve the matter of costs. In that email Mr Murdoch said "*The Employment Authority has the same status as the district court. When an award of costs is given it is a matter of public record. This will affect your ability to travel overseas, gain credit, and possibly further employment.*" The comments about travelling, obtaining credit and employment are fallacious and threatening. They were made to a young, unrepresented person in a context which required good faith. Such statements are inimical to the concept of good faith and are totally inappropriate.

Dzintra King

Member of the Employment Relations Authority

