

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 101A/08  
5095193

BETWEEN

RICHARD KIRK  
Applicant

AND

WILLIAM GORDON CRAIG  
ON BEHALF OF THE  
TRUSTEES OF THE ESTATE  
OF W BRUCE CRAIG AND  
WILLIAM CRAIG  
Respondent

Member of Authority: G J Wood

Representatives: Richard Kirk on his own behalf  
Lance Rowe for the Respondent

Submissions Received: 22 August 2008

Determination: 5 September 2008

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In my substantive determination I found against Mr Kirk's claims that he was owed money, but accepted some of Mr Craig's claims against Mr Kirk in the sum of \$1,045.32.

[2] For Mr Craig, Mr Rowe seeks full solicitor/client costs (subsequent to mediation) of \$7,741.50. He does so on the following bases:

- That the respondent was always prepared to settle at around the sum awarded by the Authority;
- That Mr Kirk did not provide his records until the day of the hearing, in breach of a direction by the Authority;
- That Mr Kirk provided three schedules to try and prove that he was underpaid, but none of them was consistent with the other;

- That Mr Kirk persisted in his claim despite being told that he had been overpaid in the first instance.

[3] Subsequent to the Authority's determination, Mr Craig received two pieces of correspondence from Mr Kirk, which Mr Rowe submitted demonstrated the vexatious nature of Mr Kirk's claims. The first was a note to Mr Craig which stated:

*A word of advice. My cost to you has not finished yet. Trust me.*

[4] The second contained a photocopied \$20 bank note with the statement, set out verbatim:

*Dear Gordie,*

*Here's a down payment on the \$10,000 I cost you, because believe me pal you won't get a cent out of me. That's a fact.*

*Love*

*Rick*

*I look forward to you preusing it.*

[5] Mr Kirk declined the opportunity to comment on the respondent's submissions.

[6] As with any judicial body, in the Authority costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct, although conduct that increases costs unnecessarily can be taken into account when inflating or reducing an award. Furthermore, as Mr Kirk is well aware, costs generally follow the event.

[7] There is no evidence of Mr Kirk being unable to meet a costs order. The respondent was successful in its claim against Mr Kirk and was also successful in defending Mr Kirk's claim against it. As Mr Rowe correctly pointed out, a major reason for this was that Mr Kirk had not taken into account the fact that he had been paid for a full month, when he had only worked part of the month when he ended his employment.

[8] In the ordinary course of events, an appropriate order for costs for a full one day hearing such as this can range from \$1500-\$3000. Significantly, Mr Kirk did not follow the direction of the Authority to provide his work diary on which his claims were based in advance of the investigation meeting. This necessarily greatly extended the time of the investigation meeting and therefore a higher award is appropriate.

[9] Clearly Mr Kirk is very angry about his treatment by his former employer, even though he has been shown to be wrong in his claims against it. That is not the same thing,

however, as a finding that his claims were vexatious or frivolous. The subsequent correspondence to the respondent shows that his anger has continued, but it is not evidence, I conclude, of his claim being vexatious or frivolous in the first instance.

[10] Taking all these facts into account, I conclude that the respondent is entitled to a reasonable contribution to his costs in the sum of \$3,000.

[11] I therefore order Mr Richard Kirk to pay to Mr William Gordon Craig, on behalf of the trustees of the estate of W Bruce Craig and William Craig, the sum of \$3,000.

**G J Wood**  
**Member of the Employment Relations Authority**