

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 48B/09
5146848

BETWEEN JIMBOB GREGORY
 Applicant

AND CHIEF EXECUTIVE OF THE
 DEPARTMENT OF
 CORRECTIONS
 Respondent

Member of Authority: Robin Arthur

Representatives: Mark Ryan for Applicant
 Bridget Smith for Respondent

Submissions received: 4 December 2009 from Respondent

Determination: 23 December 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] The Chief Executive of the Department of Corrections seeks an order for costs in this matter in which the Department's actions in issuing warnings, monitoring performance and dismissing Jimbob Gregory were found to be justified (Determination AA48A/09, 10 November 2009). The Department also successfully resisted Mr Gregory's application for interim reinstatement (Determination AA48/09, 13 February 2009).

[2] The parties have been unable to resolve the matter of costs between themselves. The Department says it has incurred more than \$80,000 in legal fees and seeks a contribution towards those costs of \$20,000. It submits a daily rate of \$4000 should be awarded for the three-day investigation meeting, one-day hearing on the interim reinstatement application, and a further day for the extensive preparation required for the attendance and examination of eight witnesses – that is a total of five days.

[3] While Mr Gregory has challenged the Authority's determination (ARC98/09), it is usual in such circumstances for the Authority to determine costs on its investigation. Costs in the Authority may then also be addressed in the challenge.

[4] Mr Gregory has lodged no submission on costs.

[5] Applying familiar principles on the Authority's exercise of the discretion to award costs, the Department as the successful party is entitled to a reasonable but modest contribution to its costs.¹

[6] It is appropriate for a notional daily rate to be applied in this case – starting at \$3000 – and adjusted up or down for particular factors.

[7] The Department seeks an increase on that daily rate – to \$4000 – on the basis that the three day investigation was complex and required extensive preparation. While I accept the thorough preparation of the Department assisted the investigation, the matter was not so much complex as 'bulky'. It was really five separate but overlapping personal grievance applications – one on the dismissal, three on the written warnings and one alleging unjustified disadvantage over whether performance monitoring was properly carried out. To that extent a three-day investigation dealt relatively efficiently with a large amount of documentary, verbal and written evidence on the issues raised by each grievance application. It does not require the suggested increase on the daily rate or the addition of an additional preparation day in the calculation. Rather an appropriate award of reasonable but modest costs to the Department should allow for four days at \$3000 a day.

[8] **Mr Gregory is to pay to the Department the sum of \$12,000 as a reasonable contribution to its costs in responding to his personal grievance and interim reinstatement applications.**

Robin Arthur
Member of the Employment Relations Authority

¹ *PBO Limited v Da Cruz* [2005] 1 ERNZ 808 (EC).