

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 13A/09  
5120282

BETWEEN      NIKOLAI JAMES STAKES  
                         Applicant

AND              GREY DOOR LIMITED  
                         T/A THE BUNKER RESTAURANT  
                         & BAR  
                         Respondent

Member of Authority:      Helen Doyle

Representatives:              Applicant appeared in person  
   Dale Lloyd, Counsel for Respondent

Submissions received:      10 February 2009 from Applicant  
   20 February 2009 from Respondent

Determination:                20 March 2009

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]      In my determination dated 5 February 2009 I found in favour of the applicant that he had a personal grievance that he was unjustifiably dismissed from his employment. I made an award for compensation but no order for lost wages in circumstances where the applicant had been offered but refused reinstatement to his previous position and therefore failed to mitigate his loss in terms of wages.

[2]      The applicant was not represented during the investigation meeting but he referred to incurring legal expenses at an earlier date with respect to his personal grievance and the expense in the bringing of a witness from Auckland. I asked in my determination that the applicant provide details of his expenses.

[3]      I received those details and Ms Lloyd on behalf of the respondent made submissions about the expenses incurred.

[4] The applicant supplied invoices with respect to legal fees. He said that they were in the combined sum of \$2,639.62. I have in adding the invoices arrived at a slightly different figure of \$2656.00. The applicant provided information about the airfares in the sum of \$330 for the witness.

[5] Ms Lloyd on behalf of the respondent submits that of the three invoices provided for legal fees one was in respect to mediation and another for matters not related to the investigation meeting. In terms of the airfares, Ms Lloyd submits that the witness was unnecessary and that in any event Mr Stakes used air points to purchase the ticket and there was no loss to him.

### **Determination**

[6] I am satisfied that the three invoices supplied are for legal work performed with respect to Mr Stakes' personal grievance. The first invoice is for attendances as at 29 April 2008. That invoice is for the sum of \$883.62 inclusive of GST. A perusal of the documentation supplied to the Authority supports that this invoice was in all likelihood for work related to an initial consultation and taking of instructions and letters written raising a personal grievance on 17 March and 26 March 2008.

[7] The second invoice is dated 10 June 2008. That in the main related to preparation for and, attendance at, mediation on 9 June 2008. That invoice is for the sum of \$1,592.71 inclusive of GST. I accept Ms Lloyd's submission that costs in relation to mediation are not generally recoverable unless there are unusual circumstances. There were no such unusual circumstances in this case.

[8] The third and final invoice is dated 22 July 2008 and is for \$179.67. That sum included the \$70 filing fee.

[9] The applicant is entitled to a reasonable contribution to his legal expenses incurred for the purposes of his claim in the Authority. I do not find the applicant is entitled to preparation for and attendance on his behalf at mediation.

[10] I consider that a reasonable contribution would be work performed on the applicant's behalf that enabled the preparation and lodging of the statement of problem. This would include obviously an initial consultation and the taking of instructions necessary to prepare the application to the Authority. I consider that I must have regard not only therefore to the third invoice but also to the first invoice. I

assess a reasonable contribution on the basis of three hours work at a conservative hourly rate of \$200. That is a total of \$600. The applicant is entitled to be reimbursed the sum of \$600 towards reasonable legal expenses incurred and reimbursement of his filing fee of \$70.

[11] In terms of travel expenses, Ms Lloyd submits that the witness who travelled from Auckland was not a necessary witness and that because airpoints were used the applicant did not in fact incur any costs for the witnesses' attendance. Ms Lloyd relied on *Reid v. NZ Fire Service Commission* [1995] 2 ERNZ 38 Goddard CJ to support that the Authority must consider whether the costs which were actually incurred were reasonably incurred. I accept that approach is the correct one.

[12] At the heart of the employment problem the Authority had to investigate was whether or not the applicant had resigned. The witnesses who travelled from Auckland was the applicant's flatmate in Queenstown and her evidence was that whilst the respondent was of the view that the applicant had resigned she knew that not to have been the case. She also gave evidence as to the applicant's state of mind at the material time.

[13] I accept that her evidence overlapped in some respects with another witness and I would not have considered that she was an essential witness. I do not however conclude that her evidence was unnecessary in terms of the Authority's investigation and/or that the expense and cost of her attendance was unreasonable. Ms Amberger's evidence, along with all the witnesses assisted in the Authority investigation.

[14] The air points gifted to the witness by the applicant to enable her to travel did have a value to the applicant. That was the value of the airfare which was \$330.00. The applicant is entitled to be reimbursed for that expense.

[15] Grey Door Limited T/A The Bunker Restaurant & Bar is to pay to Nikolai Stakes the sum of \$1,000 towards his expenses.

Helen Doyle  
Member of the Employment Relations Authority