

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 129/09
5031632

BETWEEN MICHAEL AVERY
Applicant

AND NEW WOOL PRODUCTS
LIMITED
Respondent

Member of Authority: Paul Montgomery

Representatives: Brent Climo, Advocate for Applicant
Dean Kilpatrick, Counsel for Respondent

Submissions received: 18 March 2009 from Applicant
19 March 2008 from Respondent

Determination: 12 August 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] In determining the substantive issues, the Authority dismissed the applicant's claims in their entirety. The respondent, by its counsel, seeks a costs determination granting a substantial contribution to the respondent's reasonably incurred costs.

[2] Mr Kilpatrick has provided the costs incurred by his client to defend itself in these proceedings which comprises invoices to a total of \$18,654.94 exclusive of GST. I note some costs related to matters not directly related to the Authority's investigation however, the bulk do.

[3] Mr Avery has advised the Authority he is in no position to meet any order for costs, and has provided documents which support this submission. Further, he has presented medical evidence of his chronic coronary disease and spinal injury, both which restrict his ability to work.



[4] The financial position of Mr Avery is serious by any measure, including arrears of child support payments and student loan payments. He and his partner care for children and are in rented accommodation. Unfortunately, some of the documents supporting Mr Avery's submission are considerably dated. The figure of the child support arrears is set out in a letter from the Inland Revenue Department which is dated 29 September 2006. The address of the rental property occupied by the applicant and his family is not provided on the page of the tenancy agreement signed by the landlord, so it is difficult for the Authority to determine whether the weekly rent of \$360 applies to his current residence.

[5] There is no supporting document in respect of the student loan in the sum of \$30,000. However, there is a copy of an application for examination of judgment debtor filed by a Nelson solicitor in the sum of \$7,243.09. Mr Avery advises he is paying this off by instalments.

[6] The matter of costs is discretionary. That discretion is to be exercised in a principled manner. The respondent has been put to considerable cost in defending the applicant's ultimately unsuccessful claims. It is entitled to lay claim to a contribution to its reasonably incurred costs.

[7] The principle set out in *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808 are applicable in this case and in reference to this particular matter, the principle that costs *awards will be modest*. The Authority is also required to consider the statutory jurisdiction to award costs consistent with the equity and good conscience jurisdiction of the Authority.

[8] Weighing these principles in the light of the merits of the applicant's case and his financial situation, but mindful also of the respondent's costs and the relatively brief time taken in the investigation meeting, I think it just to award the respondent the sum of \$1,200 as a contribution to what I find were its reasonably incurred costs.



Paul Montgomery
Member of the Employment Relations Authority

