IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

CA 14A/10
5166856

BETWEEN	DION MANSON Applicant	
AND	TOM RYAN CARTAGE LIMITED Respondent	

Member of Authority:	James Crichton
Representatives:	Tim Twomey, Counsel for Applicant Wayne Jones, Advocate for Respondent
Submissions Received:	17 February 2010 from Applicant No submission from respondent
Determination:	29 April 2010

COSTS DETERMINATION OF THE AUTHORITY

The application for costs

[1] By determination dated 26 January 2010, the Authority resolved the employment relationship problem between these parties by determining that Mr Manson had a personal grievance for unjustified dismissal.

[2] Costs were reserved.

The claim for costs

[3] Counsel for Mr Manson indicates total actual costs exceed $9,500 inclusive of GST. Further, it is noted that the applicant has been put to further cost because of the refusal of the respondent to engage with the applicant's representative after the Authority reserved costs in this substantive determination.

[4] Conversely, the applicant's counsel points out that this was a case where the respondent acted for itself thus incurring no legal costs but also failed to engage properly with the Authority's process. That latter submissions is well made. There

was a flagrant failure to engage with the Authority despite the efforts of Mr Wayne Jones the respondent's Operations Manager who attended on the day and acted as a witness and a representative at various stages during the investigation meeting.

[5] Indeed, in the substantive determination, the Authority found that the respondent had not acted in good faith and indicated that if the matter were to go on challenge to the Court, the Authority would be comfortable about issuing a good faith report in relation to the lack of engagement of the respondent in the process. That is in fact precisely what happened and the good faith report issued by the Authority was commented on appropriately by the applicant but not at all by the respondent, thus perpetuating the failure to engage in all facets of the Authority's engagement with the file.

[6] Finally counsel for the applicant quite properly notes that his assistance in the appropriate and thorough preparation of the matter for the investigation meeting materially assisted the Authority in its subsequent investigation and determination on the matter and that despite the good offices of Mr Jones personally, no such assistance was derived by the Authority from the respondent's engagement with the Authority's process.

The legal principles

[7] The well known decision of the full Court in *PBO v. Da Cruz* [2005] ERNZ 808 sets out the principles used by the Authority in determining matters in a costs setting and confirms the appropriateness of those principles. The tariff based approached used by the Authority was specifically approved by the Court as long as the particular circumstances of the individual case were also taken into account.

[8] The appropriate questions for the Authority to ask in a costs environment are threefold:

(a) What are the actual costs of the successful party;

(b) Are those actual costs reasonable? And

(c) What proportion of those costs ought to be borne by the unsuccessful party: *Graham v. Airways Corporation of New Zealand Ltd*

(Employment Relations Authority, Auckland, AA39/04 28 January 2004).

Discussion

[9] The costs incurred by the successful party are as I mentioned $9,500 inclusive of GST and I consider those costs, in a global sense, within a reasonable range for matters of this kind, having regard to the particular difficulties that the applicant would have had in engaging with the employer party. Looking at that matter using the tariff based approach frequently adopted by the Authority, a starting point for a one day matter of this kind would be a figure of perhaps $3,000. However, the particular exigencies of this file require a layering to that basic daily tariff.

[10] First and most importantly, this was a case where the respondent party breached its good faith obligations both in its obligations to the Authority as a tribunal and its obligations to the other party. By virtue of those several breaches, I am satisfied on the evidence before me that additional costs were incurred by the applicant in the prosecution of his claim; or put another way the applicant would have incurred a less significant bill from his able counsel if the respondent had acted in good faith throughout the proceedings. It cannot be fair and just to effectively penalise the applicant as the successful party by requiring him to bear a greater share of the costs of this proceeding simply because the respondent was not prepared to engage in the Authority's process. Indeed the converse ought to be the case; the respondent ought to bare a greater share of the costs burden because of their behaviour.

Determination

[11] Had this matter been dealt with between two engaged and participating parties treating each other and the Tribunal in good faith, then it would have been fair to record that this was a straightforward personal grievance dealt with by the Authority within a single days hearing time. In that circumstance, there would have been no matters of particular complexity which could be said to have materially added to the time taken to deal with the matter or the time taken for the representatives to prepare for the investigation meeting.

[12] However, by virtue of the failure of the respondent employer to engage appropriately in the process, there was significant increase in the costs incurred by the

applicant as the successful party and I determine that it is proper that the lions share of that cost be met by the respondent.

[13] I direct that the respondent is to pay $7,500 as to a contribution to the costs of the applicant in this matter.

James Crichton
Member of the Employment Relations Authority