

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 25/10
5155608

BETWEEN COLIN PRINCE
Applicant

AND COLLINS LAWSON LIMITED
t/a KITCHEN STUDIO
NORTH SHORE
Respondent

Member of Authority: James Crichton

Representatives: Mark Nutsford, Advocate for Applicant
Paul Collins, Advocate for Respondent

Submissions Received 18 December 2009 from Applicant
30 November 2009 from Respondent

Determination: 22 January 2010

COSTS DETERMINATION OF THE AUTHORITY

The application for costs

[1] By determination dated 13 November 2009 the Authority resolved the employment relationship problem between these parties by determining that Mr Prince had no personal grievance.

[2] Costs were reserved.

The claim for costs

[3] The respondent, as the successful party, seeks to recover reimbursement of legal expenses incurred in connection with the hearing. The respondent (Kitchen Studio) was not represented at the investigation meeting but the costs submission indicates that Kitchen Studio took legal advice on matters such as the drafting of evidence and accordingly three invoices are submitted from Kitchen Studio's lawyers amounting to a total of \$1,848.22.

[4] For Mr Prince, it is contended that the total amount sought by the successful party is not far short of what it might have incurred if counsel had actually appeared at the investigation meeting and appeared for them. Further, Mr Prince argues that the total amount sought, which comprises three separate invoices, is short on detail and could conceivably relate to anything. Further, the dates of the invoices do not necessarily gel with the timing of the claim proceeding through the Authority.

[5] Finally, and perhaps most significantly, Mr Prince indicates that he is impecunious and his wife is now suffering ill health. It follows that Mr Prince is not in a position to meet anything other than a very modest award and even that would need to be on the footing that he had time to pay. It is submitted on Mr Prince's behalf that costs should lie where they fall.

The legal principles

[6] The Full Court in *PBO Ltd v. Da Cruz* AC 2A/5 identified the principles used by the Authority in fixing costs. The tariff-based approach is referred to specifically with approval so long as the particular circumstances of the individual case are taken into account as well.

Determination

[7] This is a matter where the successful employer effectively acted for itself although its submission indicates that it took advice from its lawyers along the way. I accept that statement at face value, but I think Mr Prince's submissions in opposition have some force and effect.

[8] In particular, I agree that the information provided in the narration from Kitchen Studio's lawyers is hardly fulsome and, while it may relate to the matter in question, the fact that there is no substantive narration makes it available for the other side to argue that the costs relate to something else. Furthermore, the timing of some of the invoices suggests they may not have related to this matter, although again if the narration had been fulsome that could have been explained as simply a billing period issue rather than when the advice was actually tendered.

[9] In the end though, the factual position is that Mr Prince is apparently impecunious and his wife is now unwell. While it is normal for costs to follow the event and for the successful party to have a contribution to their costs from the

unsuccessful party, the fixing of costs in the Authority must be guided by principle and in the particular circumstances of this case I think Mr Prince's submission that costs should lie where they fall is well made and accordingly I decline to make an order for costs against Mr Prince. If Mr Prince is indeed short of money, any costs award is likely to be punitive as against him rather than reimbursing in favour of Kitchen Studio.

[10] It follows that I decline to award any costs in this matter.

James Crichton
Member of the Employment Relations Authority