

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 32A/10  
5099195

BETWEEN                      COOK                      EXECUTIVE  
   RECRUITMENT                      2005  
   LIMITED  
   Applicant

AND                              CHRISTOPHER HUW LEWIS  
   First Respondent

AND                              NEW ZEALAND TERTIARY  
   COLLEGE  
   Second Respondent

Member of Authority:        Dzintra King

Memoranda received:        19 and 25 February 2010 from Applicant  
   22 February 2010 from Respondent

Determination:                24 March 2010

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     The applicant, Cook Executive Recruitment 2005 Limited, was successful in its claim against the first respondent, Mr Christopher Lewis. The parties have been unable to agree costs. The applicant now seeks costs.

[2]     The applicant seeks an award above the notional daily rate applied by the Authority. It seeks \$12,074.61 costs and \$133.14 disbursements, being 66% of actual costs.

[3]     The criteria for awards of costs are set out in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

[4]     In *Da Cruz* the Court said that discretion and proper application of principles should ensure that each case was considered in light of its particular circumstances,

and that matters such as a party's inability to pay or the conduct of the parties might require an alteration in the notional daily rate.

[5] Mr Langton submitted that Mr Lewis was aware that he had breached his employment obligations and that he had been paid for invoices he had unlawfully sent out. However, instead of making arrangements to repay the amounts owed he put the applicant to the trouble of pursuing proceedings in the Authority. In such circumstances the applicant should be compensated for the costs incurred in doing that; and the compensation should put the applicant in as close a position as possible to that it would have been in had the first respondent not elected to put the applicant to the trouble of pursuing the matter in the Authority.

[6] The applicant's actual costs amount to \$18,294.87 excluding GST and disbursements of \$133.14.

[7] The hearing lasted one day and two days should be allowed for preparation time. The preparation helped the matter be dealt with more efficiently.

[8] The first respondent says that a reasonable contribution would be \$1,000.

[9] While I understand the applicant's concerns costs are not to be punitive.

[10] The applicant's well prepared submissions and briefs of evidence did assist in disposing of the matter in a shorter time that would otherwise have been the case. This was a matter of some complexity and I accept that an award above the notional daily rate is fair in the circumstances.

[11] The first respondent is to pay the applicant the sum of \$6,000 costs and \$133.14 disbursements.

Dzintra King

Member of the Employment Relations Authority