

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 101A/10  
5294944

BETWEEN                      MICHAEL SHARPE  
   Applicant  
  
AND                              THE CHIEF OF THE NEW  
   ZEALAND DEFENCE FORCE  
   Respondent

Member of Authority:      K J Anderson  
  
Representatives:            A Sharp, Counsel for Applicant  
   J Holden, Counsel for Respondent  
  
Submissions Received:    31 March 2010 for the Applicant  
   23 April 2010 for the Respondent  
  
Determination:              8 June 2010

---

**COSTS DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1]     The applicant, Mr Michael Sharpe, was successful in his application for an injunction restraining the respondent, The Chief of the New Zealand Defence Force (“the NZDF”) from continuing its investigation until such time as the criminal proceedings against Mr Sharpe are concluded in the District Court. The parties were invited by the Authority to resolve the matter of costs but have not been able to do so.

[2]     As evidenced by the invoices provided, Mr Sharpe incurred costs of \$16,000 plus disbursements of \$368.92. He seeks that the Authority award to him the sum of \$7,000 plus the disbursements sum, as a contribution by the NZDF towards his costs. In advocating support for the sums sought, Mr Sharpe says that the proceedings, leading to the granting of injunctive relief, were required, largely because the NZDF sought to continue with its disciplinary investigation, despite Mr Sharpe expressing

his concerns about potential incrimination and/or other adverse affects, upon the impending criminal proceedings.

[3] The submissions for Mr Sharpe also refer to the urgency of the matter, the volume of material that had to be prepared and the importance to Mr Sharpe of gaining the injunctive restraint, given the pending criminal proceedings.

[4] The substance of the submissions for the NZDF acknowledge that it was aware that Mr Sharpe was contemplating proceedings, but say that it was not incumbent on the NZDF to put its disciplinary procedures “on hold.” And in any event, the NZDF did propose limiting the issues on which it wished to proceed, in acknowledgement of there being some matters that required the NZDF to await the outcome of the criminal proceedings.

[5] The NZDF also points to the Authority finding that the overall justice of the case fell marginally in favour of Mr Sharpe, hence it is appropriate that costs should lie where they fall, or alternatively, given that the investigation meeting occupied approximately half a day, an award of “no more” than \$1,500 (plus disbursements) would be appropriate.

### **Determination**

[6] Exercising the discretion available to the Authority and applying the principles established in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808, in particular, the equity and good conscience jurisdiction of the Authority; I take into account that the overall justice of the case, in regard to granting the restraint sought by Mr Sharpe, fell marginally in his favour. I am also cognisant of the fundamental right of the NZDF to conduct its disciplinary investigation, particularly given the evidence available to it in regard to the actions of Mr Sharpe.

[8] Looking closely at all the circumstances,<sup>1</sup> I find that there is no good reason to depart from the general tariff based approach recognised in *Da Cruz*. The hearing was approximately half a day but some recognition should be given to the detailed

---

<sup>1</sup> I find that the circumstances are not comparable with those which arose in *Begley v Cropmark Seeds Limited* CA 168A/09, Member Crichton, 7 December 2009.

preparation for the hearing, on an urgent basis, hence I conclude that an award of \$2,500, plus disbursements, is warranted.

[9] The Chief of the Ministry of Defence is ordered to pay to Mr Sharpe the sum of \$2,500 plus disbursements of \$368.92; a total of \$2,868.92.

**K J Anderson**  
**Member of the Employment Relations Authority**