

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 2A/10
5141569

BETWEEN BRYAN VINCENT FORREST
Applicant

AND NELSON BAYS
COMMUNITY LAW
SERVICE INCORPORATED
Respondent

Member of Authority: Philip Cheyne

Representatives: Bryan Forrest, the Applicant in person
Steven Zindel, Counsel for Respondent

Submissions Received: 5 February 2010 from the Respondent
No reply from the Applicant

Determination: 17 March 2010

DETERMINATION OF THE AUTHORITY

[1] In a determination dated 8 January 2010 I dismissed Mr Forrest's personal grievance claim and reserved costs for the parties to lodge and serve memoranda subject to a specified timetable. I now have a memorandum from counsel for the respondent but nothing from Mr Forrest. The support officer left a phone message for Mr Forrest on 5 February 2010 to remind him about the need to reply but that has not produced any response. The time for any reply has elapsed so I will proceed to determine costs.

[2] I am told that counsel's costs total \$7,567.80 including GST and some disbursements. Copies of these invoices have been provided and it is clear that these costs relate to work done for the purposes of the investigation meeting. The respondent's previous representative was also paid a fee for work up to and including

mediation. That fee is irrelevant for present purposes, the Authority's practice being generally not to take account of costs associated with mediation.

[3] The respondent was completely successful and I see no reason why there should not be an award of costs in its favour in accordance with *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808.

[4] The respondent made a Calderbank offer by letter dated 5 August 2009, several months before the investigation meeting. I am asked to increase the award of costs against Mr Forrest because most of counsel's legal costs could have been avoided if Mr Forrest had accepted this offer. The point is a fair one and I will increase the award to recognise it. The other point made by counsel is that the respondent incurred the costs of preparing a bundle for the investigation meeting when normally an applicant might have to incur that cost. That is a minor point and I do not think it makes any difference on the daily tariff approach I will adopt.

[5] There is nothing to establish that Mr Forrest is unable to meet an award of costs.

[6] In *Chief Executive of Department of Corrections v Tawhiwhirangi* [2008] ERNZ 73 the Employment Court indicated that \$3,000.00 per day is a fair starting point for assessing costs on a daily tariff basis. I adopt that starting point here. This was a one day investigation meeting that involved untangling a lot of disputed evidence. There was one main witness for the respondent and a number of others whose evidence was needed to help resolve the conflicts between Mr Forrest and the main witness. When the matter was scheduled there was thought that two days might be required but we managed to conclude it within one day. To reflect the factual complexity and the Calderbank offer I order Mr Forrest to pay costs of \$4,500.00 to the respondent.

Philip Cheyne
Member of the Employment Relations Authority