

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2011] NZERA Wellington 183  
5336818

BETWEEN                      MARK PAUL DEASON  
   Applicant

AND                              DARRELL AND TAYLOR  
   ANTONOPOULOS t/a La Casa  
   Pasta Limited and Whonere  
   Holdings Limited  
   Respondents

Member of Authority:       Michele Ryan

Representatives:            Peter McLuskie for Applicant  
   No appearance for Respondents

Submissions received:      14 October 2011 from Applicant  
   Nil from Respondents

Determination:               Wednesday 16 November 2011

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 19 September 2011 the Authority found the respondents failed to provide the applicant with an intended employment agreement, failed to keep and provide time and wages records, failed to pay wages and holiday pay owed and unjustifiably dismissed the applicant from his employment.

[2] The Authority awarded remedies for unpaid and lost wages and holiday pay. It also ordered compensation to be paid to the applicant and penalties to be paid to both the applicant and the Crown.

[3] The applicant claims \$7,374.95 in costs (although no documentation was provided to support this sum) and a filing fee of \$71.56 on the basis that his claims were unopposed and upheld before the Authority.

[4] No submissions as to costs were received by or on behalf of the respondents.

[5] In *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*<sup>1</sup> the Employment Court referred to a number of principles which give guidance to the Authority when it considers costs. The Court affirmed the Authority's power to award costs as discretionary and that awards of costs are modest. The Court noted that costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in terms of an award.

[6] Normally the Authority will assess costs on a daily tariff basis<sup>2</sup>. In assessing that tariff a common starting point is \$3,000 per day<sup>3</sup>. From that point adjustment may occur depending on the circumstances.

[7] The investigation meeting took approximately two hours and the applicant was successful in his claims. The applicant made preparations on the basis that his claim would be defended. If the respondents had done so this matter would likely have been heard before the Authority for at least half a day. While I consider it unsatisfactory that the respondents did not attend the investigation meeting or comply with any timetabling despite agreement to do so, I do not consider that the respondents' conduct and omissions further increased the costs for the applicant. In these circumstances a half day tariff should apply.

[8] I order the respondents, Darrell and Taylor Antonopoulos, jointly and severally pay the applicant the sum of \$1,500 as a contribution towards the applicant's costs and \$71.56 as the cost of the filing fee.

Michele Ryan

**Member of the Employment Relations Authority**

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<sup>1</sup> [2005] ERNZ 808

<sup>2</sup> *ibid*

<sup>3</sup> *Chief Executive of the Department of Corrections v Tawhiwhirangi (No 2)* [2008] ERNZ 73