

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 434
5331597

BETWEEN STEPHEN WATSON
 Applicant

AND GREEN ENERGY
 CORPORATION LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: Danny Gelb, Advocate for Applicant
 David Creamer, Director of Respondent

Submissions received: 04 October 2011 from Applicant
 None from Respondent

Determination: 05 October 2011

COSTS DETERMINATION OF THE AUTHORITY

- A Green Energy Corporation Limited is ordered to pay Mr Stephen Watson:**
- (a) \$5,000 towards his legal costs; and**
 - (b) \$71.56 as reimbursement of his filing fee.**

[1] In a determination dated 15 September 2011¹ the Authority held that the applicant had been unjustifiably dismissed.

[2] Costs were reserved and a timetable was set for costs to be dealt with by exchange of memoranda.

[3] The applicant has applied for costs by filing a brief of evidence dated 20 September 2011 in support of his costs application. The respondent advised via email dated 04 October 2011 that it would not be providing costs submissions.

¹ [2011] ERNZ Auckland 399

[4] The applicant has incurred actual costs of \$7,151.57 inclusive of GST. He sought full indemnity costs on the grounds that he made a without prejudice except as to costs offer dated 13 April 2011 which was unreasonably declined.

[5] This offer was stated to remain open until 19 April 2011 and it was accompanied by a draft Record of Settlement to be signed off by a mediator from the Department of Labour under s.149 of the Employment Relations Act 2000 (“the Act”). The settlement was stated to be confidential and without admission of liability. It provided for the applicant to be paid \$7,500 under s.123(1)(c)(i) of the Act within 7 days of the mediator signing the Record of Settlement.

[6] Mr Creamer responded to that offer via email on 14 April 2011 which stated “*I have not opened or read your letters or offer, I have no interest in them.*”

[7] The applicant was the successful party and he is entitled to a contribution towards his actual legal costs. This matter involved a one day investigation meeting.

[8] The principles relating to an award of costs in the Authority were set out by the full Court in *PBO Limited (formerly Rush Security Limited) v Da Cruz*.² I have adopted the Authority’s normal daily tariff approach to costs, and have applied a notional starting tariff of \$3,000 per day, which is then to be adjusted in a principled manner to reflect the particular circumstances of this case.

[9] I do not consider there are any factors which warrant a decrease to the notional tariff.

[10] I consider that the applicant’s settlement offer on 13 April 2011 is a factor which warrants an increase to the notional daily tariff. It was a reasonable offer which was made well in advance of the investigation meeting and the respondent was given adequate time to consider it.

[11] It would have avoided the applicant incurring almost all of the costs he did because the settlement offer was made after mediation had occurred but before he

² [2005] ERNZ 808

filed his Statement of Problem. At that point the parties had not had to file any evidence.

[12] The Authority awarded the applicant \$7,871.56 less \$174.29 for the respondent's successful counterclaim, which meant he was ultimately received \$7,697.27 which was \$197.27 more than he had offered to settle for in April 2011.

[13] I consider the notional daily tariff should be increased by \$2,000 to reflect that the applicant was unnecessarily required to incur legal costs in excess of \$5,000 because of the respondent's unreasonable failure to accept his realistic settlement proposal.

[14] Green Energy Corporation Limited is ordered to contribute \$5,000 towards the applicant's actual legal costs and it is ordered to reimburse him \$71.56 for his filing fee.

Rachel Larmer
Member of the Employment Relations Authority