

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 337
5298672

BETWEEN

IAN SMITH
Applicant

AND

CHIEF EXECUTIVE OF THE
DEPARTMENT OF
CORRECTIONS
Respondent

Member of Authority: Vicki Campbell

Representatives: Anamika Singh for Applicant
Jarryd Alcorn for Respondent

Submissions received: 16 May 2011 from Applicant
2 May 2011 from Respondent

Determination: 27 July 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 5 April 2011, the Authority held that Mr Smith's claim against the Chief Executive of Department of Corrections ("DOC") for a personal grievance for unjustified disadvantage had not been established.

[2] I reserved the question of costs and invited the parties to resolve the matter between them. The parties have been unable to resolve the matter between them and I am now in receipt of a memorandum from the Respondent seeking a contribution towards its costs.

[3] The principles appropriate to the exercise of the Authority's discretion in relation to costs are set out in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*¹. Costs will generally follow the event and awards will be modest. However, in exercising its discretion to award costs the Authority is required to first consider whether the costs incurred by DOC were reasonable in all the circumstances.

¹ [2005] 1 ERNZ 808.

[4] Mr Alcorn says DOC's legal fees amounted to \$23,317.38 plus disbursements of \$436.54 for travel and \$676.24 for office service fees. No invoices have been provided to show how the legal fees were incurred. Without that proof, it is difficult for the Authority to establish whether the legal fees were reasonable. Further, the Authority is aware there are a number of highly qualified employment law specialists based in Hamilton. Given that the matter was not overly complex, I am of the view that Mr Smith should not be burdened with the choice made by DOC to engage out of town counsel.

[5] Submissions on behalf of Mr Smith show that Mr Smith was in receipt of WINZ support from April until 3 June 2011. There is no other proof that Mr Smith is impecunious or not able to sustain an award of costs against him.

[6] The investigation meeting was completed in less than a day. Having regard to the nature of the investigation, and in the principled exercise of my discretion **Mr Smith is ordered to pay to the Chief Executive of Department of Corrections the sum of \$1,000 in costs plus disbursements of \$676.24.**

Vicki Campbell
Member of the Employment Relations Authority