

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2011] NZERA Wellington 193  
5298820

BETWEEN

STUART CHAMBERS  
Applicant

AND

ERS NEW ZEALAND  
LIMITED T/A  
TRANSPACIFIC  
INDUSTRIAL SOLUTIONS  
Respondent

Member of Authority: P R Stapp

Submissions received by: 19 September 2011

Determination: 29 November 2011

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The matter of costs was reserved in the Authority's determination [2011] NZERA Wellington 128. The matter remains unsettled and requires a determination.

[2] The respondent has applied for a sum of costs and disbursements and requested that it reflect an attempt to get a settlement on the costs. The respondent has asked for more than the daily tariff. The applicant has opposed the sums requested by the respondent.

**Issues**

[3] The issue is how much is the applicant required to pay the respondent?

**Determination**

[4] The notional daily tariff applies as a starting point. This involves an all inclusive tariff rate and is different to applying a multiplier to establish the amount for preparation. In this regard the principles of *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808 apply. The respondent successfully defended the applicant's claims. Therefore costs follow the event. The respondent is entitled to costs having regard to the following factors:

[5] The respondent successfully defended the applicant's claims. It has incurred costs by reasonably engaging a representative for help.

[6] Both parties attended mediation to try and save costs and to try and settle their differences.

[7] There was a one day investigation meeting that involved preparation (including written statements and producing documents). More information was required after the hearing from the applicant. Written submissions were arranged for filing after the hearing. The latter is actually usually included in the tariff. The former has added to the costs.

[8] There was a late withdrawal of allegations relating to alleged breaches of health and safety duties. A portion of evidence time and preparation had to cover these issues before the claims were withdrawn. The claims should have been reasonably withdrawn earlier to avoid costs.

[9] The respondent had to contend with delays in the matter being progressed at least after the mediation. The matter went on hold for the applicant to decide what to do and an application for stay of proceedings was declined by the Authority in a determination dated 9 September 2010. This added to the costs. An investigation meeting had to be vacated, a proposed new date was not suitable to the Applicant's Counsel and a meeting did not take place until 6 April. These may have been inconvenient to the respondent, but there is little detail on the respondent being put to unnecessary costs because of them.

[10] Overall I assess that costs should go slightly above the tariff because of the late withdrawal of claims during the investigation that the respondent had to prepare for.

**Orders of the Authority**

[11] Mr Chambers is to pay ERS New Zealand Limited \$3,500 contribution towards its costs and \$281.85 for disbursements.

P R Stapp  
Member of the Employment Relations Authority