

[5] It is generally recognised that costs follow the event and that awards will be modest and frequently judged against a notional daily rate. This rate is recognised in the Authority at \$3,500. The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[6] Ms Hudson sets out the background to the matter being dealt with by the Authority. The matter was originally filed by the applicant and heard in the Disputes Tribunal, but was adjourned for three months by the Referee to enable the applicant to pursue a claim in the Employment Relations Authority that the relationship between the parties was one of employer and employee. Ms Hudson records in her submissions that during a directions conference with the Authority before the matter was set down, the Authority advised Mr Burton that he could continue to pursue his claim in the Disputes Tribunal. Ms Hudson said that as a result of the applicant electing not to do that, it put the respondent to unnecessary costs.

[7] Ms Hudson submits that the respondent has incurred costs of \$4,446 plus GST. Ms Hudson seeks on behalf of the respondent either full reimbursement of costs or a reasonable contribution to costs. She submits that the hourly rate charged to the respondent was a subsidised one as the respondent is a member of the Otago Southland Employers Association. She submits that the respondent's position from the outset was that the applicant was never offered employment and therefore the relationship was not that of employment.

[8] Mr Burton in his submission says that he cannot understand why the respondent feels that he should be awarded any costs because if the money had been paid as invoiced by the respondent then the matter would never have gone further. Mr Burton said that he went to the appropriate place to recover his withheld income in the Disputes Tribunal and that the Referee raised the jurisdictional issue.

[9] Mr Burton says that he was told that he had to go to the Employment Relations Authority and that it was not his fault that the additional costs have been incurred.

Determination

[10] The Authority in this case can have regard in a general way to how the matter came before it but for the purposes of costs it is not a significant factor. Costs normally follow the event and before the Authority the respondent was successful.

[11] The normal daily tariff in the Authority is \$3,500, but in the circumstances of this case, I am of the view that the award should reflect that the matter was able to be dealt with in half a day. The respondent prepared a brief of evidence, submissions and provided documentation including a spreadsheet of work activity and leave. Mr Burton is critical of the respondent for obtaining representation as he did not. The respondent is entitled to seek representation and had Mr Burton been found to have been an employee then other quite significant claims against the respondent could have followed.

[12] In all the circumstances, I am of the view that there should be an award of costs but that it should be modest. It is a rather unfortunate set of circumstances, but I am not satisfied in the exercise of my discretion that no award of costs should be made. That would not be just or fair.

[13] I am of the view that an appropriate award of costs would be the sum of \$1,500.00.

[14] I order Andrew Burton to pay Best Removals Otago Limited the sum of \$1,500 being costs.

Helen Doyle

Member of the Employment Relations Authority