

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2013] NZERA Wellington 149
5417653

BETWEEN BADEN RAWLE
 Applicant

AND SCOTT & RICKETTS LIMITED
 t/a MITRE 10 MEGA
 Respondent

Member of Authority: Trish MacKinnon

Representatives: Piers Hunt, for the Applicant
 Gary Tayler, for the Respondent

Submissions received: 3 and 15 October 2013 from the Respondent
 14 October 2013 from the Applicant

Determination: 22 November 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination of 30 September 2013, I dismissed Baden Rawle's claims against Scott & Ricketts Limited t/a Mitre 10 Mega (Mitre 10 Mega) in their entirety. I found that Mr Rawle was justifiably dismissed and I rejected his claim that Mitre 10 Mega had breached its duty of good faith to him. Costs were reserved.

[2] The parties have not been able to resolve the issue of costs and Mitre 10 Mega, now seeks a contribution of \$3,000 towards its total costs of \$3,825 plus GST.

[3] Mr Hunt submits that Mr Rawle is an undischarged bankrupt who is currently unemployed. He says Mr Rawle is a beneficiary and is in no position to pay costs which, in the circumstances, should lie where they fall. Mr Hunt says that Mitre 10 Mega was informed of Mr Rawle's bankruptcy status before he lodged his application in the Authority.

[4] Mitre 10 Mega, through its advocate, Mr Tayler, denies any prior knowledge of Mr Rawle's bankruptcy. It was unaware that he may have been acting unlawfully in commencing proceedings without the consent of the Official Assignee, before the investigation meeting.

[5] The Authority was not informed of Mr Rawle's bankruptcy status, either before or during the investigation meeting. My only knowledge of it has come from Mr Hunt's submissions on Mr Rawle's behalf relating to the current application for costs by Mitre 10 Mega.

[6] It is not for me to determine whether or not Mr Rawle has breached the provisions of the Insolvency Act 2006. That is a matter for the Official Assignee to determine and follow up if appropriate.

[7] Mr Hunt provided no evidence of Mr Rawle's bankruptcy status or his inability to meet an award of costs against him. As Mr Tayler has rightly noted, for Hunt's submission to have credibility, he should have provided evidence by way of affidavit, with supporting proof as to Mr Rawle's financial means. In the absence of such evidence I intend to treat the application for costs no differently from any other.

[8] The well-known case of *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*¹ set out the principles applicable to awards of costs in the Authority. These include that costs follow the event and awards are to be moderate. They are frequently based on a notional daily tariff that the Authority in its discretion can adjust up or down according to the circumstances.

[9] The investigation meeting took half a day and, on the current notional daily tariff, this would result in an award of \$1,750. Mr Tayler has urged me to exercise my discretion to increase this amount to \$3,000. This is on the basis that Mr Rawle's claims totally lacked merit, which was reflected in their failure, and the preparation time was the same as it would have been for a full day.

[10] I am not satisfied that there is any reason to increase the tariff for a half day investigation meeting. Nor am I persuaded that there is any reason to decrease the tariff to take account of Mr Rawle's bankruptcy.

¹ [2005] 1 ERNZ 808

[11] In all the circumstances I consider that \$1,750 is an appropriate award for costs and I order Mr Rawle to pay that amount to Mitre 10 Mega.

Trish MacKinnon
Member of the Employment Relations Authority