

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2013] NZERA Christchurch 236
5417154

BETWEEN JAMES ANDREW HOBSON
 Applicant

A N D THE CORNER STORE 2009
 LIMITED
 Respondent

Member of Authority: Helen Doyle

Representatives: David Jackson, Counsel for Applicant
 Kelvin Campbell, Counsel for Respondent

Submissions Received: 23 October 2013 from Applicant
 5 November 2013 from Respondent

Date of Determination: 14 November 2013

COSTS DETERMINATION OF THE AUTHORITY

A. I have ordered The Corner Store 2009 Limited to pay to James Hobson the sum of \$1071.56 being costs and the filing fee.

[1] The Authority found that the applicant was unjustifiably dismissed from his employment with the respondent in its determination dated 8 October 2013 and awarded remedies for lost wages and compensation. The Authority dismissed the respondent's counterclaim against the applicant and reserved the issue of costs with a timetable set for an exchange of submissions.

[2] Submissions as to costs have now been received from both parties.

The applicant's submissions

[3] The applicant was not represented at the Authority investigation meeting but his solicitor has provided details of costs incurred by the applicant for steps taken in

the proceedings leading to the investigation meeting. The total actual costs incurred as set out in the submissions are \$3,107.16 and the applicant seeks an award for \$2,500.

[4] Mr Jackson refers to the judgment of the Full Court of the Employment Court in *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] ERNZ 808 and the principles therein that are appropriate to the Authority and consistent with its functions and powers.

[5] Mr Jackson submits that the following matters should increase any award of costs. The applicant attempted unsuccessfully to resolve the matter by proposing settlement, the counterclaim was without merit and there was a discovery issue that required an additional telephone conference with the Authority.

The respondent's submissions

[6] Mr Campbell, on behalf of the respondent, submits that the applicant is seeking costs which would include costs related to advice prior to or in relation to mediation. Mr Campbell submits that costs are not generally awarded in those circumstances and he submits that this matter only occupied half a day and as the applicant was unrepresented at the Authority investigation meeting this must impact on what is an appropriate costs award in this case. Mr Campbell submits that only costs associated for preparing for the investigative hearing should be awarded and that a fair and reasonable award of costs would be the sum of \$877.50 being half of the amount of the third invoice.

Determination

[7] The three invoices issued to the applicant for legal expenses are dated 24 April 2013, 30 July 2013 and 27 September 2013. The actual invoices although described are not provided. From my assessment of when the parties attended mediation it is most likely that the second invoice may have involved the costs relating to mediation.

[8] I do not find that this is a case where the Authority would consider it appropriate to make any award for such an attendance.

[9] The investigation meeting was half a day and the matter was reasonably straightforward. There was a cost to the applicant in having his solicitor assist him in

preparation of statements of evidence and also original pleadings. There were two telephone conferences required in this matter and that would also have added to the expenses incurred by the applicant.

[10] In all the circumstances however I accept Mr Campbell's submission that there was no attendance at the investigation meeting by Mr Jackson and that must reflect on costs taking into account what would have been the type of costs award the Authority would have made on the basis of half of the usual daily tariff. That is \$1750. I accept that there was some additional expense incurred because of the counterclaim. There were attempts made as the Authority would expect to resolve the matter.

[11] I am not satisfied that this is a case where indemnity costs should be awarded. If the costs for mediation are removed then that appears to be close to what Mr Jackson is seeking. There should be a fair and reasonable award of costs consistent with the nature and type of the case. It must take into account that the applicant appeared unrepresented at the investigation meeting.

[12] In all the circumstances, I am of the view that a fair and reasonable award would be the sum of \$1,000 together with reimbursement of the filing fee of \$71.56.

[13] I order The Corner Store 2009 Limited to pay to James Hobson the sum of \$1,071.56 being costs together with the filing fee.

Helen Doyle
Member of the Employment Relations Authority