IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

[2016] NZERA Auckland 279
5595375

	BETWEEN	JARAH McLAREN Applicant
	A N D	STEPHEN MARR HAIR DESIGN NEWMARKET LIMITED Respondent

Member of Authority:	James Crichton
Representatives:	Paul Pau, Advocate for Applicant Penny Swarbrick, Counsel for Respondent
Submissions received:	14 July 2016 from Applicant 30 June 2016 from Respondent
Date of Determination:	18 August 2016

COSTS DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

The substantive determination

[1] In my substantive determination issued as [2016] NZERA Auckland 151, and dated 19 April 2016, I found for the respondent, but reserved costs.

[2] The successful respondent now seeks an award of costs, the parties having been unable to resolve matters on their own terms.

The application for costs

[3] The respondent seeks an award of $5,414.61 being the application of the daily tariff for one and a half days, together with a modest amount for disbursements.

The response

[4] The applicant accepts that costs are due, accepts the daily tariff approach, but denies that a day and a half is the appropriate basis for calculation, maintaining that only a day should be charged.

Determination

[5] The matter was straightforward and the time devoted to hearing the evidence was one sitting day. Both parties accept the applicant is liable to that extent.

[6] The dispute is around the half day extra sought by the successful respondent. Certainly it is true that the half day additional was not taken up with hearing evidence but with the receipt of oral submissions.

[7] The respondent says the half day was required, *"… the applicant's counsel not being prepared on the scheduled day to provide the Authority with submissions"*.

[8] Conversely, the applicant correctly says he sought permission to file written submissions, but that he deferred to counsel for the respondent's suggestion that there be an oral presentation of submissions on a later date to defray costs for the parties.

[9] Accepting that the recital just recited accurately records the engagement between the parties, the real issue is whether the device of having oral submissions did reduce the costs to the parties, or not.

[10] I conclude that it did reduce the cost to be charged to the parties and that it is appropriate to allow the time spent in presenting oral submissions to be included in the total time for the hearing.

[11] After all, if the matter had proceeded in the normal way with oral submissions concluding the matter at the end of the evidence, or written submissions timetabled and filed after the event, in either situation, those attendances could properly be taken into account for the purposes of assessing costs.

[12] On the other hand, were I to conclude that the proposal to present oral submissions increased the cost to the parties, then I consider it would be improper to make a further allowance for that time.

[13] Having taken all those matters into account, I conclude that a proper award of costs in this matter is in the $5,000 plus disbursements as charged of $164.61. I am not troubled by the lack of "evidence" of the costs incurred; I am entitled to rely on counsel's assertions, as an officer of the Court, that the fee charged and the disbursements incurred are as stated in the respondent's submissions.

[14] It follows that the applicant is to pay to the respondent the sum of $5,164.61 as a contribution to the costs the respondent incurred in successfully resisting the applicant's claims in this Authority.

James Crichton
Chief of the Employment Relations Authority