

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2018] NZERA Christchurch 125  
3019772

BETWEEN                      MORRIS BRADLEY  
Applicant

A N D                              BRENDAN WILSON,  
MARGARET BOND, DENIS  
GAPPER, HINEMOA CONNER,  
ADRIAN WILSON AND  
TRACEY TAMOU as trustees of  
the NGATI APA KI TE RA TO  
TRUST  
Respondent

Member of Authority:        Peter van Keulen

Representatives:              Callum Martin, Counsel for Applicant  
Alan Knowsley, Counsel for Respondent

Submissions Received:        10 August 2018 for respondent  
16 August 2018 for applicant

Date of Determination:        28 August 2018

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**COSTS DETERMINATION OF THE AUTHORITY**

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**The substantive determination**

[1]     In a determination dated 19 July 2018<sup>1</sup>, I dismissed Morris Bradley's claims for unjustified dismissal, breach of duty of good faith and breach of his employment agreement.

[2]     In my determination, I reserved costs in order to give the parties an opportunity to try and resolve the question of costs. The parties have been unable to agree costs and Mr Knowsley lodged a submission seeking costs on behalf of the Trust. Mr Martin has responded with submissions on behalf of Mr Bradley.

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<sup>1</sup> [2018] NZERA Christchurch 101

## **Application for costs**

[3] Mr Knowsley seeks costs based on the daily tariff applied to three days of investigation meeting at an increased rate of \$5,000.00 per day.

[4] Mr Martin's primary submission on behalf of Mr Bradley is that the costs application should be deferred as Mr Bradley has lodged a challenge to my determination in the Employment Court, and costs should be dealt with after that challenge has been resolved.

[5] If I am minded to deal with costs now, Mr Martin says the starting point for costs is 2.75 days of investigation meeting at the applicable rate of \$4,500.00 for the first day and \$3,500.00 for the subsequent days; this is \$10,625.00. He says further that I should not increase the daily tariff but rather I should reduce it to reflect Mr Bradley's impecuniosity. Mr Martin submits that an appropriate award of costs would be \$7,500.00.

## **Discussion**

[6] The power of the Authority to award costs is set out in clause 15 of Schedule 2 of the Act. The principles and approach adopted by the Authority in respect of this power are well outlined in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*<sup>2</sup> and have been affirmed by the Full Court in *Davide Fagotti v. Acme & Co Ltd*<sup>3</sup>.

[7] I am satisfied that it is appropriate to award costs to the Trust now, as it was the successful party in this claim and a challenge does not operate as a stay.

[8] As both counsel have submitted the starting point for the costs assessment is the daily tariff, I am satisfied that the daily tariff is the correct approach in this case.

[9] I accept Mr Martin's submission that as the investigation meeting took 2.75 days the starting point is \$10,625.00. I must now consider whether this should be increased or decreased.

[10] Mr Knowsley says an increase is justified given the complexity of this matter, the number of witnesses required and that additional submissions were lodged after the investigation meeting. I do not accept that, in this case, these factors justify an increase. This case was a relatively standard constructive dismissal claim. The number of witnesses was not

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<sup>2</sup> [2005] 1 ERNZ 808

<sup>3</sup> [2015] NZEmpC 135

excessive, and in any event additional witnesses means additional investigation meeting time and this is reflected in the application of the daily tariff. Lodging submissions in writing after the investigation meeting is also a relatively common occurrence and the submissions did not appear to involve a large amount of additional work for Mr Knowsley or the Trust.

[11] In contrast, I accept Mr Martin's submission that costs should be reduced to reflect Mr Bradley's financial hardship. I heard evidence in the investigation meeting of Mr Bradley's financial position.

[12] Considering Mr Bradley's financial circumstances, I reduce the amount payable as Mr Martin has suggested. I consider \$7,500.00 to be an appropriate award of costs.

### **Determination**

[13] Mr Bradley must pay the Trust \$7,500.00 as a contribution to the costs it has incurred in this matter.

Peter van Keulen  
Member of the Employment Relations Authority