

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2019] NZERA 608  
3054839

BETWEEN IAIN WARBURTON  
Applicant  
  
A N D DYNES TRANSPORT  
(TAPANUI) LIMITED  
Respondent

Member of Authority: Peter van Keulen  
  
Representatives: Peter Cahill, advocate for the Applicant  
Rachel Brazil, counsel for the Respondent  
  
Investigation Meeting: On the papers  
  
Submissions Received: 8 October 2019, from the Applicant  
24 September 2019, from the Respondent  
  
Date of Determination: 23 October 2019

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**COST DETERMINATION OF THE AUTHORITY**

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**The substantive determination**

[1] In a determination dated 28 August 2019<sup>1</sup>, I determined that Dynes Transport (Tapanui) Limited had not unjustifiably dismissed Iain Warburton, that Mr Warburton had not

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<sup>1</sup> [2019] NZERA 503.

raised his personal grievance for unjustified action within the 90 day time frame so I did not have jurisdiction to hear it, and Dynes Transport did not breach the duty of good faith.

[2] In my determination, I reserved costs in order to give the parties an opportunity to agree how costs should be dealt with between them. The parties have been unable to agree and Ms Brazil now applies for costs on behalf of Dynes Transport.

[3] Ms Brazil submits that Dynes Transport was wholly successful in defending Mr Warburton's claims and costs should follow the event. Dynes Transport seeks an award of costs of \$4,500.00 representing the daily tariff for the one-day investigation meeting.

[4] Mr Cahill says any award of costs should be reduced because the investigation meeting did not occupy a full day, Dynes Transport never attended mediation and Dynes Transport unreasonably cancelled a meeting to discuss Mr Warburton's dismissal.

[5] Mr Cahill concludes that each party should be responsible for their own costs.

## **Discussion**

[6] I have considered the power to award costs, set out in clause 15 of Schedule 2 of the Employment Relations Act 2000. I have also considered the principles set out in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*<sup>2</sup> and other relevant Employment Court and Court of Appeal decisions<sup>3</sup>.

[7] It is appropriate to award costs to Dynes Transport, as it was successful in defending Mr Warburton's claims. And, that costs award should be based on the daily tariff.

[8] My investigation meeting took half of a day. The daily tariff for the first day of an investigation meeting is \$4,500.00 so \$2,250.00 is the starting point.

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

<sup>3</sup> *Victoria University of Wellington v. Alton-Lee* [2001] ERNZ 305, *Blue Star Print Group (NZ) Ltd v. Mitchell* [2010] NZCA 385, *Booth v. Big Kahuna Holdings Ltd* [2015] NZEmpC 4, *Stevens v. Hapag-Lloyd (NZ) Ltd* [2015] NZEmpC 28, *Davide Fagotti v. Acme & Co Ltd* [2015] NZEmpC 135

[9] Turning to whether the daily tariff should be adjusted down further for reasons submitted by Mr Cahill I am not satisfied that any further adjustment is appropriate.

**Determination**

[10] Mr Warburton must pay Dynes Transport (Tapanui) Limited \$2,250.00 as a contribution to the costs it has incurred in this matter.

Peter van Keulen  
Member of the Employment Relations Authority