

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2011] NZERA Auckland 144
5318254**

BETWEEN PAUL LAMB
 Applicant

AND THE COMMISSIONER OF THE
 POLICE
 Respondent

Member of Authority: Eleanor Robinson

Representatives: David Grindle, Counsel for Applicant
 Sally McKechnie, Counsel for Respondent

Submissions received: 18 March 2011 from Applicant
 7 March 2011 from Respondent

Determination: 8 March 2011

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

1. In a determination dated 10 February 2011 ([2011] NZERA Auckland 52), the Authority found that the Applicant, Mr Paul Lamb, had been justifiably dismissed by the Respondent, the Commissioner of the Police (“the Police”).
2. In that determination costs were reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately they have been unable to do so, and both parties have filed submissions in respect of costs.
3. This matter involved 2 days of Investigation Meeting, with written submissions being submitted subsequent to that. The Police, citing reasonably incurred costs of \$46,507.50 (excluding GST) are seeking a contributory award of \$15,000.00 towards their actual costs, and disbursements of \$3,446.72, a total of \$18,446.72 .
4. Ms McKechnie, in support of the level of the claim by the Police, submitted as significant factors for the consideration of the Authority that:
 - the matter was conducted on an urgent basis at the request of Mr Lamb;

- the matter was complex;
- Mr Lamb had required disclosure of an extensive number of documents on an urgent basis on the grounds that there might be a challenge to the admissibility of the documentation, yet there was no formal challenge;
- it involved a significant number of witnesses, two of which had been called during the investigation Meeting;
- additional matters were raised by Mr Lamb during the Authority's investigation process which required considerable further work from counsel during the Investigation.

5. Mr Grindle, on behalf of Mr Lamb, opposed the Police's application for costs. Mr Grindle submitted for the consideration of the Authority that in the unique circumstances of the case surrounding the dismissal, which included the prosecution and acquittal of Mr Lamb in the District Court, costs should lie where they fall. In support, Mr Grindle submitted for the consideration of the Authority that:

- the Police had not issued a *Calderbank letter* nor notified Mr Lamb that they would be seeking to claim costs greater than those normally applicable on a tariff basis;
- although resolution of the matter was urgent from Mr Lamb's perspective, the matter had not been dealt with on an urgency basis in the Authority, the statement of problem having been submitted on 6 September 2010 and the Investigation Meeting having taken place on 7 and 8 December 2010.
- Mr Lamb was of severely limited means, not in receipt of regular income, and without the ability to pay a costs award.

6. The principles applicable to awards of costs in the Authority are well established. It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*¹ that costs are modest. A tariff based approach is that usually adopted by the Authority, which

¹ [2005] 1 ERNZ 808

has the discretion to raise or lower the tariff, depending on the circumstances. For a 2 day Investigation Meeting this would normally equate to an award of \$6,000.00.

7. I have read Mr Lamb's affidavit which supplements the submissions on his behalf, and I accept that at this time Mr Lamb is facing significant financial difficulty.
8. I am also mindful of the emotional impact Mr Lamb's dismissal from his position with the Police, and subsequent exclusion from a career he valued extremely highly, has had upon him. This has been compounded by the publicity attendant upon the prosecution and the Authority proceedings, which has in turn adversely impacted Mr Lamb's future employment prospects.
9. It is not appropriate for the Authority to impose hardship upon an unsuccessful party to proceedings and this is a case in which it is appropriate for the Authority to use its discretion by lowering the tariff. As observed by Employment Court in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*:² "...even an award of costs based on a low daily rate may not be feasible where the liable party does not have the means to pay..."
10. However I find that in all the circumstances surrounding this case, the Police as the successful party are entitled to some recompense for costs. In the circumstances I believe a contribution towards costs of \$2,000.00 is a reasonable contribution. Accordingly, Mr Lamb is ordered to pay the Police \$2,000.00, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

Eleanor Robinson
Member of the Employment Relations Authority

² Ibid at para [46]