

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Mumtaz Ali (Applicant)  
**AND** General Distributors Limited (Respondent)  
**REPRESENTATIVES** Zaheda Ali, Counsel for Applicant  
Stephen Langton, Counsel for Respondent  
**MEMBER OF AUTHORITY** Marija Urlich  
**MEMORANDA RECEIVED** 27 March, 15 May 2006  
**DATE OF DETERMINATION** 16 May 2006

**DETERMINATION OF THE AUTHORITY AS TO COSTS**

[1] In a determination of the substantive matter between the parties, dated 5 December 2005, I found Mr Ali's dismissal was justified. Costs were reserved and the parties were invited to attempt to resolve this issue themselves. Correspondence provided to the Authority shows those efforts have been unsuccessful and counsel for the parties have filed costs memoranda requesting the Authority determine this issue.

[2] Mr Langton seeks a contribution to costs incurred by GDL of \$6000 plus expenses of \$142.50. He submits that the actual costs incurred by GDL in defending Mr Ali's application were substantially greater than these sums and, applying the principles articulated in *Da Cruz v PBO Ltd*<sup>1</sup>, submits that the contribution sought is reasonable given:

- (i) GDL's defence of Mr Ali's claim was wholly successful;
- (ii) the hearing time of 1 and a ½ days, plus a calculation of a further ½ day for preparation of written closing submissions;
- (iii) Mr Ali's, at times, obstructive approach to the investigation meeting;
- (iv) the importance to GDL of the verification of its disciplinary process; and
- (v) the investigation hearing time was extended to provide a translator.

[3] Ms Ali submits that the Authority should take a lenient approach to the issue of costs in this case and any award, if any, should be minimal. In relation to the Authority's decision to call an interpreter, Ms Ali submits that it was necessary for the conducting of a fair hearing, Mr Ali's right to have a translator present and any delay was administrative. The correspondence between the parties includes an assertion that Mr Ali is suffering financial hardship. No evidence has been provided to the Authority to support this assertion.

[4] I accept Mr Langton's submission that \$3000 per day is a reasonable notional daily rate to apply to this case. I also accept that the adjournment of the first day's investigation meeting has put

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<sup>1</sup> *Unreported, AC2A/05, 9 December 2005, Employment Court, Auckland, Colgan, Travis, Shaw JJ.*

GDL to additional expense and that that adjournment was necessary because the Authority had not been put on notice prior to the investigation meeting that a translator was necessary. The nature of the challenges raised by Mr Ali to the justification of his dismissal required extensive documentation to be prepared for and examined during the investigation meeting. This is another factor which I accept has contributed to GDL's expenses.

[5] As the successful party GDL is entitled to a reasonable contribution to costs reasonably incurred. I set that contribution at \$4500 and Mr Ali is ordered to pay GDL that amount.

[6] GDL is also entitled to reimbursement of the amount of expenses sought. Mr Ali is ordered to pay GDL the sum of \$142.50.

Marija Urlich  
Member of Employment Relations Authority