

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 207  
5398862

BETWEEN                      DANNY BELSHAM  
   Applicant  
  
A N D                              PORTS OF AUCKLAND  
   LIMITED  
   Respondent

Member of Authority:      Anna Fitzgibbon

Representatives:              Simon Mitchell, Counsel for Applicant  
   Richard Mellraith and Kylie Dunn, Counsel for  
   Respondent

Submissions Received:      03 May 2013 from Respondent  
   No submissions from Applicant

Date of Determination:      22 May 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A.      Mr Danny Belsham is ordered to contribute \$3,500 towards Ports  
            of Auckland Limited's legal costs.**

[1]      In a determination of the Authority dated 19 November 2012<sup>1</sup> an order was made for the interim reinstatement of Mr Danny Belsham to his position as stevedore with Ports of Auckland Limited (POAL).

[2]      In a substantive determination dated 19 April 2013<sup>2</sup> the Authority dismissed Mr Belsham's employment relationship problem. POAL having successfully defended the claim brought by Mr Belsham was asked to file and serve a memorandum as to costs within 14 days of the date of the Authority's determination. Mr Belsham was given 14 days from receipt of POAL's memorandum as to costs to file his memorandum as to costs. POAL filed and served a memorandum of costs seeking a contribution of \$3,500 to its costs. POAL submitted \$3,500 to be an

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<sup>1</sup>              [2012] NZERA Auckland 412

<sup>2</sup>              [2013] NZERA Auckland 136

appropriate and reasonable contribution given the normal starting point for costs in the Authority for a one day investigation meeting is \$3,500. Mr Belsham did not file a memorandum as to costs in response.

[3] The Authority's power to award costs arises from Schedule 2, clause 15 of the Employment Relations Act 2000 (the Act). This confers a wide discretion on the Authority to award costs, on a principled basis.

[4] The principles guiding the Authority's approach to costs are set out by the Full Employment Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808. Those principles are so well recognised I do not need to restate them.

[5] The general principle is that costs follow the event, and I see no reason to depart from that in this case. Accordingly, POAL as the successful party is entitled to a contribution towards its legal costs.

[6] The Employment Court in *Carter Holt Harvey v. Eastern Bays Independent Industrial Workers Union & Ors*<sup>3</sup> observed that a notional daily tariff approach, which was to be adjusted in a principled way, was best suited to the Authority's unique jurisdiction. I adopt that approach.

[7] POAL says its legal costs significantly exceeded \$3,500 but seeks an order that Mr Belsham pay \$3,500 costs. In support POAL refers to a recent Authority decision *Fifita (aka Bloomfield) v. Dunedin Casinos Limited*<sup>4</sup> in which the Member states the normal starting point for costs in the Authority is \$3,500 per day.

[8] This matter involved an investigation meeting of almost one full day. I have adopted a notional daily tariff of \$3,500 as my starting point. No reasons were advanced on behalf of Mr Belsham seeking an adjustment of that notional tariff and I do not consider there to be any factors to warrant any such adjustment.

[9] I order costs of \$3,500 is to be paid by Mr Belsham.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**

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<sup>3</sup> [2011] NZEmpC

<sup>4</sup> [2012] NZEA Christchurch 2019