

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2020] NZERA 457  
3084052

BETWEEN                      GARY BOUDETTE  
   Applicant  
  
AND                                ISO LIMITED  
   Respondent

Member of Authority:        Vicki Campbell  
  
Representatives:              Andrea Webster, advocate for Applicant  
   Kate Ashcroft, counsel for Respondent  
  
Submissions received:        14 October 2020 from Applicant  
   21 October 2020 from Respondent  
  
Determination:                9 November 2020

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A.        Mr Boudette is ordered to pay to ISO Limited the sum of \$4,500 as a contribution toward costs within 28 days of the date of this determination.**

[1]        In a determination dated 7 October 2020 I found Mr Boudette was not unjustifiably dismissed and declined his application for arrears of wages.<sup>1</sup>

[2]        I reserved costs and invited the parties to resolve the issue between them. The parties have been unable to resolve the matter and the successful party, ISO Limited

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<sup>1</sup> *Boudette v ISO Ltd* [2020] NZERA 404.

now seeks a contribution toward the costs it incurred dealing with Mr Boudette's claims.

[3] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks reasonable.<sup>2</sup> The principles applying to costs are well settled and do not require repeating.<sup>3</sup>

[4] An assessment of costs in the Authority will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.<sup>4</sup> The investigation meeting took one day so the starting point is \$4,500. From there adjustments may be made depending on the circumstances.

[5] ISO Limited seeks a contribution of \$4,500 reflecting the one day investigation meeting tariff. Mr Boudette, while accepting costs follow the event, argues for a significant reduction.

[6] Mr Boudette submits he is impecunious and is unable to meet an award of costs. Mr Boudette's claim faces a major impediment which is that it is unsupported. No credible evidence has been tendered to support the claim of impecuniosity.

[7] Standing back and weighing all the relevant submissions and information provided by the parties I am not convinced there are grounds which would justify a departure from the tariff.

[8] Accordingly, Mr Boudette is ordered to pay to ISO Limited the sum of \$4,500 as a contribution toward costs within 28 days of the date of this determination.

Vicki Campbell  
Member of the Employment Relations Authority

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<sup>2</sup> Employment Relations Act 2000, Schedule 2, clause 15.

<sup>3</sup> *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

<sup>4</sup> Practice Note 2, Costs in the Employment Relations Authority.