

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2014] NZERA Auckland 194
5420056**

BETWEEN JAISON BROOME
 Applicant

AND KEN STOUT MOTORS
 LIMITED
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Mark Nutsford, Advocate for Applicant
 Ken Stout, Advocate for Respondent

Investigation Meeting: 11 & 12 February 2014 at Hamilton

Submissions received: 12 February 2013 from Applicant and from Respondent

Determination: 16 May 2014

DETERMINATION OF THE AUTHORITY

[1] By determination [2014] NZERA Auckland 152 the Authority found that the Applicant, Mr Jaison Broome, had been unjustifiably dismissed by the Respondent, Ken Stout Motors Limited (KSML).

[2] In that determination costs were reserved in the hope that the parties would be able to settle this issue between them. Unfortunately they have been unable to do so, and the parties have filed submissions in respect of costs.

Costs

[3] This matter involved less than half a day of an investigation meeting.

Principles

[4] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) which states:

15 Power to award costs

(1) *The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.*

(2) *The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.*

[5] Costs are at the discretion of the Authority, as observed by Chief Judge Colgan in *NZ Automobile Association Inc v McKay*¹.

[6] The principles and the approach adopted by the Authority on which an award of costs is made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*².

[7] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*³ that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*⁴ at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.”

[8] It is also a principle that costs are not to be used to punish the unsuccessful party.

Determination

[9] I find that there are no circumstances in this case which persuade me that I should depart from the established principle of not awarding costs in respect of mediation.

[10] A tariff based approach is that usually adopted by the Authority, which has the discretion to raise or lower the tariff, depending on the circumstances. For a 1 day investigation meeting this would normally equate to \$3,500.00.

[11] The normal rule is that costs follow the event and having considered all of the circumstances, I can see no justification for not making the costs award to Mr Broome as the successful party in the proceedings.

[12] Adopting the notional daily tariff rate of the Authority as \$3,500.00, I take that as the appropriate starting point for costs.

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2005] 1 ERNZ 808

⁴ [2001] ERNZ 305

[13] I order KSML to contribute \$875.00 towards Mr Broome's actual costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

Eleanor Robinson
Member of the Employment Relations Authority