

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**AA 433A/10  
5284984**

BETWEEN                      VAUGHAN BURGESS  
   Applicant  
  
AND                              CARTER HOLT HARVEY  
   LIMITED  
   Respondent

Member of Authority:      Eleanor Robinson  
  
Costs Submissions              3 and 26 November 2010  
  
Determination:                30 November 2010

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] By determination AA 433/10 the Authority found that Mr Vaughan Burgess did not have a personal grievance against his former employer, Carter Holt Harvey Limited. 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.

[2] On behalf of Carter Holt Harvey Limited, Mr France cites the principles in *CE of Department of Corrections v Tawhiwirang (No 2)*<sup>1</sup>. Relying on those principles, Mr France suggests that an appropriate award of costs to Carter Holt Harvey Limited should be \$5,000.00, this being in excess of the minimum tariff of \$3,000.00 for one investigation day in the Authority. Mr France in reliance on the approach taken by Judge Shaw submits that recognition of preparation time, and the additional time and costs associated with written submissions, is appropriate.

[3] On behalf of Mr Burgess, Mr Blair argues that the case involved no complex issues of fact or law, and also highlights the small number of documents involved in

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<sup>1</sup> [2008] ERNZ 73

the case and the conduct of the applicant which assisted in the relatively speedy disposal of the matter.

[4] I accept that there was nothing exceptional about either the case or the way in which it was conducted.

[5] The respondent company is entitled to a contribution towards its costs.

[6] *PBO Ltd v Da Cruz*<sup>2</sup> sets out the principles to be applied by the Authority in exercising its costs discretion. The Employment Court observed:

*[46] We find there is nothing wrong in principle with the Authority's tariff based approach, so long as it is not applied in a rigid manner without regard to the particular characteristics of the case. For example, 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 or, on the other hand, the daily rate may not adequately reflect the conduct of the parties or the preparation required in a particularly complex manner. The danger that tariffs may be unduly rigid can be avoided by adjustments either up or down in a principled way without compromising the Authority's modest approach to costs.*

[7] For a case of this kind \$3,000.00 is accepted as the notional daily rate.. Accordingly, Mr Burgess is ordered to pay Carter Holt Harvey Limited \$3,000.00 costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**

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<sup>2</sup> [2005] 1 ERNZ 808