

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 105/08  
5098264

BETWEEN                      DAVID BUSING  
   Applicant  
  
AND                              AUTOTERMINAL NEW  
   ZEALAND LTD  
   Respondent

Member of Authority:      Vicki Campbell  
  
Representatives:            Careen Busing for Applicant  
   Andrea Twaddle for Respondent  
  
Submissions Received:    14 March 2008 from Applicant  
   10 January 2008 from Respondent  
  
Determination:              19 March 2008

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]        In a determination dated 17 December 2007 I found that Mr Busing had not been constructively dismissed from his position with Autoterminal.

[2]        In my determination I reserved the question of costs and invited the parties to resolve the matter between them. They have been unable to do so and I am now in receipt of memorandum from both parties.

[3]        I have considered the submissions made by the parties and I am satisfied that the discretion under clause 15 of Schedule 2 of the Act ought to be exercised in favour of Autoterminal Limited.

[4]        The following principles are appropriate where the Authority is exercising its discretion in relation to costs (*PBO Ltd (formerly Rush Security Ltd) v Da Cruz*, [2005] 1 ERNZ 808):

- There is a discretion as to whether costs should be awarded and what amount;
- The discretion is to be exercised in accordance with principle;
- The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority;
- Equity and good conscience is to be considered on a case by case basis;
- Costs are not to be used as a punishment or as an expression of disapproval of an unsuccessful party's conduct although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award;
- It is open to the Authority to consider whether all or any of the parties costs were unnecessary or unreasonable;

- That costs generally follow the event;
- That without prejudice offers can be taken into account;
- That awards will be modest;
- That frequently costs are judged against a notional daily rate;
- The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[5] The respondent has incurred legal costs of \$9,062.44 plus disbursements of \$2,360.42 for a hearing which lasted one day. The disbursement costs sought by the Respondent include costs associated with witness attendance and those associated with a medical assessment for Mr Busing. It seeks a contribution to those costs.

[6] The disbursements sought by the respondent are those generally expected to be incurred with the exception of the assessment report which was obtained to assist the Authority in its investigation, at the instigation of the respondent. I have taken into account that Mr Busing has also paid to have an assessment undertaken and therefore I will make no order in relation to the disbursements, those costs will lie where they fall.

[7] It is submitted on behalf of Mr Busing that the legal costs incurred by the respondent are not reasonable. At the investigation meeting for the substantive matter, Mr Busing produced an invoice from Keynes Consult dated 4 November 2007 in the amount of \$19,544.96. At the investigation meeting Mr Busing asked me to accept these costs as reasonable. I note that the invoice was dated prior to the investigation meeting, which indicates that the costs associated with the one day investigation meeting and submissions had not been included and would be additional.

[8] The matter was not complex and I find the costs incurred by the respondent are reasonable given the preparation required and the length of the hearing. Mr Busing is required to pay to Autoterminal Limited the sum of \$3,000.00.

[9] An order is made accordingly.

Vicki Campbell  
Member of Employment Relations Authority