

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2013] NZERA Wellington 69
5347183

BETWEEN NUKU CHESLEY
 Applicant

AND CITY LINE (NZ) LIMITED
 Respondent

Member of Authority: Trish MacKinnon

Representatives: Kevin O'Sullivan, for the Applicant
 Susan-Jane Davies, for the Respondent

Submissions received: 3 May 2013 from Respondent
 18 May 2013 from Applicant

Determination: 10 June 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] In my substantive determination of 15 April 2013 I made findings in relation to Mr Chesley's dispute about the application of the collective agreement under which he was employed. I also made a finding in relation to his claim for arrears of wages.

[2] Following the issuing of that determination, the parties have made submissions on the question of costs, which was reserved by the Authority.

[3] The investigation meeting lasted one day with evidence being heard from Mr Chesley and his two witnesses, and one witness for City Line (NZ) Limited. Considerable payroll data, and analysis of that data, was received from City Line, which acknowledged that it had initially underpaid Mr Chesley by the sum of \$965.46. It had rectified the underpayment some fifteen months after Mr Chesley had commenced proceedings in the Authority, by the payment of that amount to him.

[4] Mr Chesley was successful in one of his two claims regarding the application of the relevant collective agreement, and unsuccessful in the other claim. His arrears of wages claim was only partially successful, and his employer had rectified its error before the investigation meeting.

[4] City Line seeks an order for payment of \$3,500 towards its costs. Ms Davies, who represents City Line, submits that this sum is reasonable because City Line was successful in the action. She says there was nothing unusual about the case that would justify a departure, upwards or downwards, from the usual tariff for a one day investigation meeting.

[5] Mr O'Sullivan, of the Tramways Union, represented Mr Chesley. He submits this is not an appropriate matter for an award of costs. This is because it was an acknowledged dispute, and it was necessary for Mr Chesley to obtain certainty about the application of the collective agreement.

[6] The Authority's ability to award costs is discretionary and is made following consideration of a number of principles which have been developed and applied over several years. The principles were referred to with approval by the Full Court in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*.¹

[8] Costs normally follow the event. However, in this instance I agree with Mr O'Sullivan that it would not be appropriate to award costs against Mr Chesley. He had a genuine issue over the way in which his employer was applying certain provisions of the collective agreement and he believed, with some justification, that he had been underpaid over an extended period.

[9] Mr Chesley first raised that issue in writing with his employer in August 2010. He was only partially successful in his claims over the correct application of the collective agreement, and over his claim to have been underpaid. Nonetheless it took his employer more than two years after Mr Chesley first raised his concerns to rectify the underpayment it acknowledged.

¹ [2005] ERNZ 808 (EmpC)

Determination

[9] In the circumstances I find that costs should lie where they fall.

Trish MacKinnon
Member of the Employment Relations Authority