

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 70/10  
5278468

BETWEEN

RAY CLAYTON  
Applicant

AND

PORTS OF AUCKLAND  
LIMITED  
Respondent

Member of Authority: Robin Arthur

Representatives: Simon Mitchell for Applicant  
Richard McIlraith and Kylie Dunn for Respondent

Determination 16 January 2010

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] Ports of Auckland Limited (POAL) seeks costs of \$4500 for successfully defending Ray Clayton's interim reinstatement application (Determination AA341/09, 22 September 2009) and personal grievance application for unjustified dismissal (Determination AA 341A/09, 18 December 2009).

[2] The parties were encouraged to resolve any issue of costs between themselves, with a timetable set for lodging memoranda in the Authority if they were not able to do so. Mr Clayton has not responded to POAL's costs application within the required timeframe.

[3] Mr Clayton has now filed his claim of unjustified dismissal in the Employment Court as a de novo challenge to the Authority's determination (ARC 11/10). In accordance with usual practice I have proceeded to set costs in respect of the Authority's investigations so that may also be addressed in the challenge if it is at issue between the parties.

[4] The principles applicable to the exercise of the discretion to award costs are summarised in *PBO Limited v Da Cruz* [2005] 1 ERNZ 808. In the present matter costs appropriately follow the event and there are no particular circumstances which preclude the application of a notional daily rate. That rate is currently \$3000.

[5] I take that rate as applying to a full day for the investigation meeting on the personal grievance application for which seven written witness statements and a written synopsis of submissions were prepared.

[6] The earlier investigation meeting on the interim reinstatement application lasted less than two hours but involved lodging affidavits and preparing written submissions for oral argument on the date. I apply that rate to one-third of a day rather than a half day for that meeting.

[7] In the absence of any response from Mr Clayton to POAL's costs application I cannot assess whether he can meet an award of costs but it may be that this is something his union will deal with rather than him personally.

[8] I note POAL says it incurred legal costs in excess of \$37,000 responding to Mr Clayton's applications.

[9] **Mr Clayton is to pay \$4000 to POAL as a reasonable contribution to those costs.**

Robin Arthur  
Member of the Employment Relations Authority