

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2020] NZERA 196
3067552

BETWEEN	TERRY CONDON Applicant
AND	BROADSPECTRUM (NEW ZEALAND) LIMITED Respondent

Member of Authority: Eleanor Robinson

Representatives: Peter Cranney, counsel for the Applicant
June Hardacre, counsel for the Respondent

Submissions received: 14 May 2020 from Applicant
30 March 2020 from Respondent

Determination: 14 May 2020

COSTS DETERMINATION OF THE AUTHORITY

[1] In determination [2020] NZERA 88 the Authority resolved a dispute between the Applicant, Mr Terry Condon, and the Respondent, Broadspectrum (New Zealand) Limited (Broadspectrum), in favour of the Respondent.

[2] 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.

[3] The matter was determined 'on the papers'.

[4] Ms Hardacre, for the Respondent, citing actual costs of \$24,637.50 plus GST, is seeking a contribution to costs on the basis of the normal daily tariff in the Authority of \$4,500.00, which is equivalent to one day of investigation hearing time.

[5] In support of this application Ms Hardacre submits that a full day of investigation would have been required if the matter had not been determined on the papers; the Respondent did not incur unwarranted costs; and that the Respondent was the successful party in the dispute.

[6] Mr Cranney, for the Applicant, submits that costs should either be at a level that reflects other determinations for similar matters, or that costs should lie where they fall.

Principles

[7] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 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.

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

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

Costs Award

[10] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*³ that costs are modest. Principles also include that costs are reasonable and that they normally follow the event.

[11] I see no reason for not applying these principles in this case. Broadspectrum was the successful party in the matter.

[12] Costs in the Authority are made in accordance with a daily tariff amount which is currently set at \$4,500.00 for the first day of hearing. This matter was determined 'on the papers'. Costs normally follow the event and the Respondent is entitled to a contribution towards its costs.

¹ [1996] 2 ERNZ 622.

² [2005] 1 ERNZ 808.

³ [2005] 1 ERNZ 808.

[13] I consider it appropriate to base the level of costs on the normal tariff in the Authority as at the date of filing and to take a half day investigation meeting as the starting point.

[14] Accordingly Mr Condon is ordered to pay Broadspectrum the sum of \$2,250.00 towards its legal costs, pursuant to clause 15 of Schedule 2 of the Act.

Eleanor Robinson
Member of the Employment Relations Authority