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Craib v Windsor Doors Limited (Auckland) [2007] NZERA 70 (12 March 2007)

Determination: AA 66/07 File Number: 5038795

Under the [Employment Relations Act 2000](#)

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND OFFICE

BETWEEN Jamie Craib (Applicant)
AND Windsor Doors Limited (Respondent)
REPRESENTATIVES Brian Spong for Applicant

Mordechai Henis for Respondent
MEMBER OF AUTHORITY Vicki Campbell
SUBMISSIONS RECEIVED 3 January 2007 from Applicant

7 March 2007 from Respondent

DATE OF DETERMINATION 12 March 2007

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] In a determination dated 16 November 2006 I found Mr Jamie Craib was unjustifiably dismissed from his position with Windsor Doors Limited.

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

[3] 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*, [\[2005\] NZEmpC 144](#); [\[2005\] 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.

[4] 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 Mr Craib.

[5] The applicant has incurred costs of \$4,950 for a hearing which lasted half a day. He seeks a contribution to those costs. The matter was not a complex matter and the costs incurred are reasonable given the preparation required and the length of the hearing.

[6] There is nothing in this case to derogate from the principle that costs follow the event and that the successful applicant should receive a contribution to reasonably incurred costs.

[7] Windsor Doors Limited is required to pay to Mr Craib the sum of \$1,500 as a reasonable contribution to costs.

[8] An order is made accordingly.

Vicki Campbell
Member of Employment Relations Authority

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