

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**[2014] NZERA Auckland 287  
5437489**

BETWEEN GRAHAM D'ARCY-SMITH  
Applicant

AND NATURAL HABITATS LIMITED  
Respondent

Member of Authority: Eleanor Robinson

Costs Submissions 7 July 2014 from Applicant  
23 June 2014 from Respondent

Determination: 7 July 2014

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] By determination [2014] NZERA Auckland 237 the Authority found that the Applicant, Mr D'Arcy-Smith, was an independent contractor to Natural Habitats Limited (Natural Habitats), and not an employee.

[2] In that determination 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 Applicant has filed submissions in respect of costs.

[3] This matter involved a half day of an Investigation Meeting. Natural Habitats is now seeking costs in the sum of \$6,957.79 including GST.

*Principles*

[4] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 which states:

***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.*

[5] Costs are at the discretion of the Authority, as observed by the current Chief Judge Colgan in *NZ Automobile Association Inc v McKay*<sup>1</sup>.

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

[7] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>3</sup> that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*<sup>4</sup> at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.

### **Determination**

[8] The normal rule is that costs follow the event and Natural Habitats is entitled to a contribution to its costs.

[9] A tariff based approach is that usually adopted by the Authority, which has the discretion to raise or lower the tariff, depending on the circumstances. For a half day investigation meeting this would normally equate to \$1,750.00.

[10] Natural Habitats was not legally represented at the Investigation but has submitted a claim for the costs of attendance. However the costs of the Applicant and Respondent attending an Investigation Meeting are expected to be reimbursed by the parties themselves.

[11] Natural Habitats has also submitted claims for legal costs incurred in the preparation of the matter. In this particular case I accept that Natural Habitats should be allowed costs in respect of the legal advice taken, but only in respect of the invoices submitted are clearly identified as being incurred for, and relating to, the matter which was before the Authority.

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<sup>1</sup> [1996] 2 ERNZ 622

<sup>2</sup> [2005] 1 ERNZ 808

<sup>3</sup> [2005] 1 ERNZ 808

<sup>4</sup> [2001] ERNZ 305

[4] Accordingly, Mr D'Arcy-Smith is ordered to pay Natural Habitats the sum of \$1,211.53 as costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**