

determination is restricted to the matter of costs only as they relate to the Authority's investigation culminating in an investigation meeting held on 20 May 2008 and a written determination dated 29 May 2008.

The Principles that Apply to Costs

[3] Costs are determined by the Employment Relations Authority as a matter of principle: applying *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808 and the underlying precedent cases where the principles are laid out. The Employment Court approved a daily tariff approach applied by the Authority when assessing costs. However, the Court cautioned against a rigid application of this type of approach. There was nothing exceptional or different about the employment relationship problem filed by Ms Devi from typical type problems heard by the Authority.

The Costs in the Current Matter

[4] Therefore, costs must follow the event. The Authority's jurisdiction on costs relates only to the parties cited. Ms Devi cannot rely upon making a claim of costs when she was wholly unsuccessful in her claims. On the other hand there is no basis upon which the respondents could reasonably expect to receive full indemnity costs because there was nothing exceptional about the employment relationship problem and the applicant had a right to raise issues she reasonably believed were genuine matters.

[5] I have observed that the applicant has put the respondents to the cost of the Authority's investigation. The application of the employment relationship problem was a straight forward matter of a wages and holiday pay claim. However, there was a threshold issue about identifying the employer. It was reasonably foreseeable from the evidence as to who Ms Devi's employer was. In respect of her other claims there was a litigation risk that should reasonably have been assessed without pursuing the matter in the Authority. This would have meant that in all probability the claim should not have been pursued on the grounds relied upon by Ms Devi because of the prima facie evidence and the risks. Even so if different grounds had been relied upon there would have still been difficulties, as I alluded to.

[6] I should point out that the respondents' witnesses were entirely relevant and would have needed to be heard. These witnesses included Seema Lal and Michael Manhaas, and they would have had to be heard if fewer parties had been cited. Given that the respondent relied upon one representative to represent them all, on the common issues, and because the respondents have a relationship and the witnesses were involved in Ms Devi's employment, I hold that the approach to costs should be on an all inclusive basis. I come back to the daily investigation meeting tariff.

[7] Furthermore, the applicant's approach to this matter and where she has been unsuccessful means that the costs should be apportioned above the tariff for a one day investigation meeting. The meeting lasted one full day. Preparation was required and costs would have been incurred for witness statements, the production of documents, representation at the Authority's investigation meeting and submissions. In addition and as I have already said there was nothing exceptional about the matter and the issues were reasonably foreseeable for the respondents to reply and respond to. It is my assessment that a contribution towards the respondents' reasonable costs is \$2,000.

[8] Roshni Devi is to pay the total sum of \$2,000 contribution towards costs to Manhaas Industries (2000) Limited, Manhaas Industries Limited, Seema Lal trading as Snacks Food Limited, and Michael Manhaas jointly, and the sum can be apportioned as the respondents wish.

P R Stapp
Member of the Employment Relations Authority