

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 125
5423415

BETWEEN ARDEN ERIC FATU
 Applicant

A N D VISION INTERIORS
 LIMITED
 Respondent

Member of Authority: James Crichton

Representatives: Applicant in person
 Angela Hansen, Counsel for Respondent

Submissions Received: 12 March 2014 from Applicant
 26 February 2014 from Respondent

Date of Determination: 3 April 2014

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In the substantive determination issued on 18 February 2014 as [2014] NZERA Auckland 59, the Authority rejected Mr Fatu’s claim for personal grievance and other remedies.

[2] Costs were reserved.

The claim for costs

[3] Vision Interiors Limited (Vision) seeks what it describe as “*a fixed contribution*” to the costs it incurred which it says amount to in excess of \$7,000. The supporting documentation from its lawyers is for a lesser sum of \$6,394 but nothing turns on the total quantum.

The response

[4] Mr Fatu's submission resists Vision's claim, alleging lack of specificity amongst other things, but more particularly makes a strong argument for being, if not impecunious, then certainly without surplus funds.

Determination

[5] It is not necessary to recite the law relating to costs fixing in the Authority. The principles are well established. The Authority has a discretion whether to award costs or not but its approach to costs setting must be informed by principle and not the capricious or arbitrary.

[6] The fundamental premise of the law is that costs normally follow the event and so in the normal course, Vision could expect to have a contribution to its costs. That contribution would likely be equivalent to the Authority's daily tariff rate which is currently set at \$3,500 for a full day's hearing.

[7] But the Authority is also obligated to consider the ability of the unsuccessful party to contribute to the costs of the successful party. Here, Mr Fatu gives very clear testimony about the extent of his income and the costs that he must meet on a regular basis. The Authority is particularly drawn to the information that Mr Fatu and his partner have four children still living at home.

[8] If a costs award was made against Mr Fatu, it is difficult to see how such an award would not impact negatively on Mr Fatu's children.

[9] In the particular circumstances of this case, while the Authority is always loathe to depart from the principle that litigation has risks and that claimants must be in a position to meet a contribution to the costs of their opposing party if they are unsuccessful, I am persuaded that this is a case where costs should lie where they fall, that is, in this case I decline to make any costs award against Mr Fatu.

James Crichton
Member of the Employment Relations Authority