

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2019] NZERA 253
3031431

BETWEEN

KIERAN FERGUSON
Applicant

AND

B W SILVESTER LIMITED
First Respondent

Member of Authority: Vicki Campbell

Representatives: Roland Samuels for Applicant
Bryce Silvester for Respondent

Submissions received: 19 March 2019 from Applicant
No submissions received from Respondent

Determination: 1 May 2019

COSTS DETERMINATION OF THE AUTHORITY

- A. B W Silvester Limited is ordered to pay to Mr Ferguson the sum of \$3,071.56 as a contribution toward costs within 28 days of the date of this determination.**

[1] In a determination dated 21 February 2019 I found one or more conditions of Mr Ferguson's employment were affected to his disadvantage by the unjustifiable actions of B W Silvester Limited and that he was unjustifiably dismissed.¹

¹ *Ferguson v B W Silvester Limited* [2019] NZERA 95.

[2] I reserved costs. I invited the parties to resolve the issue of costs between them. The parties have been unable to resolve the matter and I have received submissions from Mr Ferguson.

[3] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks' reasonable.² The principles applying to costs are well settled and do not require repeating.³

[4] An assessment of costs in the Authority will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.⁴ The investigation meeting took one day so the starting point is \$4,500.

[5] The investigation meeting lasted less than a day including the issue of the oral determination. Mr Ferguson has provided evidence to show he incurred total costs of \$4,025. The costs incurred are reasonable.

[6] Mr Ferguson seeks a contribution to his costs of \$3,500 plus disbursements of \$71.56 for the filing fee. Taking into account the length of the investigation meeting \$3,000 is an appropriate contribution to costs in the circumstances of this case.

[7] B W Silvester Limited is ordered to pay to Mr Ferguson the sum of \$3,071.56 as a contribution toward costs within 28 days of the date of this determination.

Vicki Campbell
Member of the Employment Relations Authority

² Employment Relations Act 2000, Schedule 2, clause 15.

³ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

⁴ Practice Note 2, Costs in the Employment Relations Authority.