

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 169A/07  
5040647

BETWEEN                      STEVEN FLYNN  
   Applicant  
  
AND                                CLASSIC CUTS LTD T/A  
   THE BACON BARN  
   Respondent

Member of Authority:        Dzintra King  
  
Representatives:              Clive Bennett, Counsel for Applicant  
   Parvez Akbar, Advocate for Respondent  
  
Determination:                11 December 2007

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     The applicant was unsuccessful in his claims against the respondent. The parties have been unable to resolve the issue of costs. The respondent seeks an award of costs.

[2]     In *Harwood v Next Homes Ltd* [2003] 2 ERNZ 443 the Employment Court said that cases such as *Binnie v Pacific Health Ltd* [2002] 1 ERNZ 438 were not applicable to costs in the Employment Relations Authority as the Authority was investigative and operated differently to conventional courts.

[3]     In *PBO Limited v Da Cruz* [2005] 1 ERNZ 808 a Full Court reiterated that the principles applicable to costs in the Authority differed from those in the Employment Court. The Court held that the Authority's costs' principles were not necessarily as comprehensive or prescriptive as those set out in *Okeby v Computer Assocs NZ Ltd* [1994] 1 ERNZ 613.

[4]     Costs in the Authority are frequently judged against a notional daily rate. There is a discretion as to whether costs are to be awarded and the discretion to award

costs must be exercised in accordance with principle and not arbitrarily. Costs generally follow the event and must not be exercised to punish a party.

[5] The respondent incurred costs of \$5242.11 plus GST. This comprises 29.1 hours @ \$175 per hour. The respondent says disbursements and administration fees of \$149.61 have been incurred. These are not identified. I cannot therefore make any award regarding disbursements.

[6] The respondent seeks full costs.

[7] The applicant says he is a poor financial situation. However, no supporting evidence of this has been supplied.

[8] This was not a complex matter. I see no reason to award full costs. The issue then is what constitutes a reasonable contribution to the respondent's reasonably incurred costs.

[9] The applicant is to pay to the respondent the sum of \$3000 costs.

Dzintra King

Member of the Employment Relations Authority