

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2011] NZERA Auckland 123  
5298230

BETWEEN	RUTH FOLEY Applicant
AND	AUCKLAND DISTRICT COLLECTIONS LIMITED Respondent

Member of Authority:	R A Monaghan
Representatives:	H Tevita, counsel for applicant C Patterson, counsel for respondent
Memoranda received:	21 March 2011 from applicant 7 March 2011 from respondent
Determination:	30 March 2011

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 7 February 2011 I found Ms Foley was not constructively dismissed. Costs were reserved and the parties have filed memoranda on the matter.

[2] Counsel for the respondent seeks a reasonable contribution to its costs calculated as 45% of the total legal costs incurred – amounting to \$12,000. The applicant did not dispute that a contribution was warranted but submitted that a starting point for assessing reasonable costs is the notional daily rate of \$3,000 for hearings in the Authority, with the amount able to be adjusted after taking into account other factors associated with the matter. Further, if there were to be an adjustment upwards, it should be small.

[3] Both parties cited the principles in *PBO Limited (formerly Rush Security Limited) v da Cruz*<sup>1</sup>, although I regard the submissions of counsel for the applicant as embodying a more accurate approach to the application of those principles.

[4] Accordingly I begin with a notional daily rate of \$3,000 for a one-day meeting. I consider it appropriate to adjust the rate upwards to reflect the extent to which Ms Foley put the respondent to additional and unnecessary expense by making allegations that were variously unsustainable or otherwise should not have been made. I refer in particular to the claims for payment of wages and holiday pay which were withdrawn during the investigation meeting, and to the wide-ranging allegations made in her witness statement in reply to the respondent's statements.

[5] For these reasons Ms Foley is ordered to contribute to the respondent's costs in the sum of \$4,000.

R A Monaghan

Member of the Employment Relations Authority

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