

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 127
5424627

BETWEEN

JEF FRENCH
Applicant

A N D

McARA AIR CONDITIONING
LIMITED
Respondent

Member of Authority: James Crichton

Representatives: Applicant in person
John Dewar, Advocate for Respondent

Submissions Received: 21 February 2014 and 27 February 2014 from Applicant
18 February 2014 and 3 March 2014 from Respondent

Date of Determination: 4 April 2014

COSTS DETERMINATION OF THE AUTHORITY

The substantive decision

[1] In the substantive determination dated 4 February 2014 and issued as [2014] NZERA Auckland 40, I rejected all of Mr French's claims for personal grievance and found for McAra Air Conditioning Limited (McAra).

[2] Costs were reserved.

The claim for costs

[3] McAra, as the successful party, seeks either two thirds of the actual costs which amounts to \$3,729 or in the alternative the application of the daily tariff approach of \$3,500.

[4] McAra makes the point in its submissions that there were multiple grievances raised by Mr French and as a consequence, each had to be addressed in the defence of McAra's position.

The response

[5] In a somewhat discursive response from Mr French, he indicates that a costs award would leave him "*in significant financial hardship*" and he attributes the fact that the matter went as far as it did, up to and including an investigation meeting in the Authority, to the intransigent attitude of McAra.

[6] In response to claims from McAra that he has some assets of value, Mr French maintains that his financial position is not strong and he reminds the Authority that he was off work for a period immediately after the dismissal by McAra.

Determination

[7] This is a straightforward matter. McAra has sought costs either on a two thirds basis or on the daily tariff approach. The Authority prefers to apply the daily tariff as a starting point and either add to or subtract from the daily tariff as the circumstances dictate. There is nothing in the present case which would justify any diminution of the daily tariff rate or indeed any augmenting of the rate.

[8] While Mr French maintains that he is impecunious, he is in employment, he does have assets and it cannot be right that a party simply proceeds with litigation, thus causing cost to the other side, and then not be prepared to contribute to the successful party's costs, when they are unsuccessful.

[9] Litigation is a process with attendant risks and parties should not undertake litigation without the clear understanding that, in the normal course of events, if they are unsuccessful, they will be asked to contribute to the costs of the successful party.

[10] That is the position here, and there is nothing before the Authority which would suggest that it is not appropriate for Mr French to contribute to the costs incurred by McAra in defending his entirely unsuccessful claim.

[11] Mr French is directed to pay to McAra the sum of \$3,500 as a contribution to its costs. The Authority will allow Mr French to pay that amount off over time. If

that process becomes protracted or difficult leave is reserved for McAra to come back to the Authority for a compliance order.

James Crichton
Member of the Employment Relations Authority