

BETWEEN

FIGORELLA GRANADOS
Applicant

AND

**FIGUREX FRANCHISING
LIMITED**
Respondent

Member of Authority: Eleanor Robinson
Submissions received: 24 October 2017 from Applicant
None from Respondent
Determination: 09 November 2017

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination [2017] NZERA Auckland 329 it was determined that the Applicant, Ms Fiorella Granados, had been constructively dismissed by the Respondent, Figurex Franchising Limited (FFL).

[2] In that determination costs had been reserved in the hope that the parties would be able to resolve this issue between themselves. Unfortunately, they have been unable to do so, and Ms Granados has filed submissions in respect of costs.

[3] The matter involved two thirds of a day Investigation Meeting.

[4] Ms Fiorella, citing actual costs of \$8,970.00 is seeking a contribution to costs.

[5] No submissions on the issue have been received from FFL.

Principles

[6] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) which states:

15 Power to award costs

(1) *The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.*

(2) *The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.*

[7] Costs are at the discretion of the Authority, as observed by Chief Judge Colgan in *NZ Automobile Association Inc v McKay*¹.

[8] The principles and the approach adopted by the Authority on which an award of costs is made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*² as confirmed in *Fagotti v Acme & Co Ltd*.³

[9] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*⁴ that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*⁵ at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.”

[10] It is also a principle that costs are not to be used as a punishment or expression of disapproval of the unsuccessful party’s conduct.

Determination

[11] A tariff based approach is that usually adopted by the Authority, which has the discretion to raise or lower the tariff, depending upon the circumstances. For two thirds of a day investigation meeting the tariff would normally equate to \$3000.00.

[12] Costs normally follow the event and Ms Granados is entitled to a contribution towards her costs.

[13] Within 28 days of the date of this determination, FFL is ordered to pay Ms Granados the sum of \$3,000.00 costs, pursuant to clause 15 of Schedule 2 of the Act.

Eleanor Robinson
Member of the Employment Relations Authority

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2015] NZEmpC 135 at [114]

⁴ [2005] 1 ERNZ 808

⁵ [2001] ERNZ 305