

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2012] NZERA Auckland 256
5334745**

BETWEEN TANGIANAU HERE
 Applicant

AND McALPINE HUSSMANN
 LIMITED
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Gregory Bennett, Counsel for Applicant
 Natalie Cooper, Advocate for Respondent

Submissions received: No submissions from Applicant
 29 March 2012 from Respondent

Determination: 27 July 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] The Authority (Member D King) issued its determination on 20 February 2012 ([2012] NZERA Auckland 61). The determination found that the Applicant, Mr Tangianau Here, had not been unjustifiably dismissed by the Respondent, McAlpine Hussmann Limited (McAlpine).

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

[3] This matter involved a one day investigation meeting, with written submissions being submitted subsequent to that by McAlpine. McAlpine is seeking reimbursement of its costs on the basis of the current notional daily rate towards its actual costs of \$6,438.67 excluding GST.

Principles

[4] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 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.*

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

[6] 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.

[7] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*³ that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*⁴ at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.

[8] Having had regard to the principles set out in *Da Cruz*, and the time taken for the Investigation Meeting, I consider that a contributory award towards the Applicant’s actual costs is reasonable.

Determination

[9] For a case of this kind \$3,500.00 is accepted as the notional daily rate. Accordingly, Mr Here is ordered to pay McAlpine \$3,500.00 costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

Eleanor Robinson
Member of the Employment Relations Authority

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2005] 1 ERNZ 808

⁴ [2001] ERNZ 305