

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2011] NZERA Auckland 158
5319822**

BETWEEN JOHAN HEYNEKE &
 BRENNAN PEREIRA
 Applicants

AND AIR NEW ZEALAND LIMITED
 Respondent

Member of Authority: Eleanor Robinson

Costs Submissions 6 April 2011 from Respondent
 18 April 2011 from Applicant

Determination: 18 April 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination [2011] NZERA Auckland 90 the Authority found that Mr John Heyneke and Mr Brennan Pereira did not raise personal grievances against the Respondent, Air New Zealand Limited, within the statutory time frame. 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 both parties have filed submissions in respect of costs.

[2] The investigation meeting addressed the issue of whether Mr Heyneke and Mr Pereira had raised personal grievance claims in time. A third applicant, Mr Alberto Ismail, advised the discontinuance of his personal grievance claim made on the same basis as Mr Heyneke and Mr Pereira, on the day of the hearing.

[3] The principles applicable to awards of costs in the Authority are well established. It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*¹ that costs are modest. A tariff based approach is that usually adopted by the Authority, which has the discretion to raise or lower the tariff, depending on the circumstances. For a full day Investigation Meeting the normal tariff would equate to an award of \$3,000.00.

¹ [2005] 1 ERNZ 808

[4] The Investigation Meeting in respect of this matter occupied slightly longer than a half day of hearing time. Mr Thompson in submissions is seeking an amount of \$1,750 including GST towards costs in respect of Mr Heyneke and Mr Pereira on the basis that it be apportioned either jointly or severally between them.

[5] I am aware that preparing for the hearing of the preliminary matter involved both parties in reasonably significant preparation. While it is unusual for the Authority to allow preparation time per day of the investigation meeting, I find that in this case, appreciation of the preparation required serves to add perspective to the assessment of the reasonableness of the level of costs claimed by Air New Zealand Limited.

[6] Costs normally follow the event and Air New Zealand Limited were the successful party in the matter. Ms Hartdegen for the Applicants submits that the Authority in exercising discretion, gives consideration to the level of the Applicants' income.

[7] Mr Heyneke and Mr Pereira are each ordered to pay Air New Zealand Limited \$750.00 towards its legal costs.

[8] Mr Thompson further submits an application for a lower costs award in respect of Mr Ismail, given the late nature of his withdrawal from the matter. The withdrawal was advised on the day of the Investigation Meeting thus that by that stage Air New Zealand Limited had undertaken some steps in preparation of his claim. In these circumstances I find this application to be reasonable, and order Mr Ismail to pay Air New Zealand \$200.00.

Eleanor Robinson
Member of the Employment Relations Authority