

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 62/08
5069847

BETWEEN NIGEL HOLLIS
 Applicant

AND JV HIAB TRANSPORT LTD
 Respondent

Member of Authority: Vicki Campbell

Representatives: Allan Bright for Applicant
 Michelle Olsen for Respondent

Submissions Received No submissions from Applicant
 14 January 2008 from Respondent

Determination: 28 February 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 14 December 2008 I found that Mr Hollis was not an employee and his claim against JV Hiab Transport Ltd failed.

[2] In my determination I reserved the question of costs and invited the parties to resolve the matter between them. They have been unable to do so and I am now in receipt of memorandum from the respondent.

[3] I am satisfied that the discretion under clause 15 of Schedule 2 of the Act ought to be exercised in favour of the respondents.

[4] The following principles are appropriate where the Authority is exercising its discretion in relation to costs (*PBO Ltd (formerly Rush Security Ltd) v Da Cruz*, [2005] 1 ERNZ 808):

- There is a discretion as to whether costs should be awarded and what amount;
- The discretion is to be exercised in accordance with principle;
- The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority;
- Equity and good conscience is to be considered on a case by case basis;
- Costs are not to be used as a punishment or as an expression of disapproval of an unsuccessful party's conduct although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award;
- It is open to the Authority to consider whether all or any of the parties costs were unnecessary or unreasonable;
- That costs generally follow the event;
- That without prejudice offers can be taken into account;
- That awards will be modest;
- That frequently costs are judged against a notional daily rate;

- The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[5] Mr Pokai on behalf of JV Hiab Transport Ltd claims a total of \$2,540.69 in costs. One of the invoices presented by Mr Pokai relates to preparation and attendance at mediation. Costs associated with mediation are not available to be included in the calculation for contribution towards costs.

[6] While the matter was not overly complex it was necessary for Mr Pokai to present detailed information relating to the accounts and structure of the business during the course of the investigation meeting. I am satisfied the costs incurred are more than reasonable given the preparation required and the length of the hearing.

[7] Mr Hollis is required to pay to JV Hiab Transport Limited the amount of \$1,000.00 which includes disbursements, as a reasonable contribution to costs.

[8] An order is made accordingly.

Vicki Campbell
Member of Employment Relations Authority