

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2016] NZERA Auckland 261
5614006**

BETWEEN LINDA HUFFMAN
Applicant

AND CALIBRE HAIRCARE LIMITED
Respondent

Member of Authority: Eleanor Robinson

Representatives: Thuzar Henry-Win, Advocate for Applicant
Greg Bennett, Advocate for Respondent

Submissions received: 28 July 2016 from Applicant
13 July 2016 2016 from Respondent

Determination: 1 August 2016

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination [2016] NZERA Auckland 210 the Authority found that the Applicant, Ms Linda Huffman, was not an employee but an independent contractor during her period of engagement with the Respondent, Calibre Haircare Limited (Calibre).

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

[3] This matter involved a one day Investigation Meeting. Mr Bennett, on behalf of Calibre is seeking a contributory award at the normal daily tariff rate in the Authority of \$13,940.38 on an indemnity cost basis.

[4] Mr Bennett is also seeking to have the Applicant's Advocate held personally liable for costs.

Principles

[5] 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:

s. 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.*

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

[7] 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.

[8] It is a principle that costs are modest.

[9] It is also a principle that costs are not to be used to punish the unsuccessful party.

Determination

[10] There is no evidence of a Calderbank³ offer, that is a without prejudice save as to costs offer, having been made in this matter. The matter for investigation was neither complex nor required protracted evidence.

[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. The tariff is currently set at \$3,500.00 per day. For a 1 day investigation meeting, this would equate to a costs award of \$3,500.00.

[12] I see no basis in this case for departing from the usual cost tariff. The normal rule is that costs follow the event and Calibre is entitled to a contribution to its costs.

[13] Ms Huffman is ordered to pay Calibre the sum of \$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 *Calderbank v Calderbank* [1976] Fam 93 (CA)

