

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2013] NZERA Auckland 264
5390016**

BETWEEN AMMY HULL
 Applicant

AND EDGINTON RESOURCES
 LIMITED
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Eska Hartdegen, Counsel for Applicant
 Christopher Eggleston, Counsel for Respondent

Submissions received: 20 May 2013 from Applicant
 7 June 2013 from Respondent

Determination: 21 June 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination [201] NZERA Auckland 190 the Authority found that the Applicant, Ms Ammy Hull, had been unjustifiably dismissed by the Respondent, Edginton Resources Limited (Edginton). However no remedies had been awarded on the basis of Ms Hull's contribution which was held to be 100%.

[2] Ms Hull had been found to be unsuccessful in her further claims of unjustifiable disadvantage, arrears of profit share and commission, unpaid annual leave and breach of good faith by Edginton.

[3] In the determination, Edginton was successful in its counterclaim against Ms Hull for breach of contract; however damages had been awarded at a nominal level.

[4] In the 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 the parties have filed submissions in respect of costs.

[5] This matter involved a two day investigation meeting with written submissions being filed subsequent to that. Mr Eggleston, on behalf of Edginton, is seeking a contributory award of \$7, 000.00 towards the actual costs.

[6] Ms Hartdegen submits that Ms Hull is facing financial hardship and has filed an affidavit from Ms Hull in support of this submission. On this basis Ms Hartdegen submits that costs should lie where they fall.

Principles

[7] 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.

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

[9] 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.

[10] 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.”

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2005] 1 ERNZ 808

⁴ [2001] ERNZ 305

Determination

[11] I have read Ms Hull's affidavit which supplements the submissions made on her behalf, and I accept that at this date Ms Hull is facing financial difficulty.

[12] Having considered the submissions and the circumstances of the case in which Ms Hull was successful in her unjustifiable dismissal claim and Edginton was successful in the counterclaim, I find that Edginton are entitled to some recompense for costs in respect of the unsuccessful further claims of Ms Hull.

[13] However it is not appropriate for the Authority to impose hardship upon Ms Hull as the largely unsuccessful party to proceedings and I consider that this is a case in which it is appropriate for the Authority to use its discretion by lowering the tariff.

[14] As observed by Employment Court in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*:⁵ "...even an award of costs based on a low daily rate may not be feasible where the liable party does not have the means to pay..."

[15] I believe that a contribution towards costs of \$2,500.00 is a reasonable contribution. Accordingly Ms Hull is ordered to pay Edginton the sum of \$2,500.00 pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

[16] Given Ms Hull's personal circumstances at the time of this costs determination it is possible that an arrangement may need to be made for Ms Hull to pay the costs by way of instalments. Leave is reserved for the parties to revert to the Authority for future orders if such arrangements are sought and cannot be agreed.

Eleanor Robinson
Member of the Employment Relations Authority

⁵ Ibid at para [46]