

- that the Applicant had by not compiling with the good faith requirements of s 4 (1A) of the Employment Relations Act 2000, failed to act in equity and good conscience when making her claim

[5] Mr Bennett for the Applicant submits that:

- the case involved no complex or difficult issues;
- the Applicant worked until 30 June 2011 thus earning the additional monies paid; and
- the Applicant held an honest belief that she had been unjustifiably disadvantaged in her employment.

[6] Mr Bennett submits that in these circumstances, a costs award of \$3,000.00 would be appropriate.

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 the current Chief Judge Colgan in *NZ Automobile Association Inc v McKay*¹.

[9] Both parties refer in their submissions to *PBO Limited (formerly Rush Security Ltd) v Da Cruz*² and submit that the principles and the approach adopted by the Authority on which an award of costs is made are well settled.

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

[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.

[11] 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 1 day Investigation Meeting this would normally equate to an award of \$3,000.00.

Determination

[12] I see no reason in the current case for departing from the normal level of awards made by the Authority in similar circumstances. The normal rule is that costs follow the event and Cockcroft & Co Ltd is entitled to a contribution to its costs.

[13] For a case of this kind \$3,000.00 is accepted as the notional daily rate. Accordingly, Ms Jo is ordered to pay Cockcroft & Co Ltd \$3,000.00 costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

[14] Cockcroft & Co Ltd has also claimed reimbursement of \$105.00 in respect of disbursements. Disbursements are normally recoverable and are supported by invoices. I am satisfied that \$105.00 is an appropriate amount for Ms Jo to contribute.

[15] Ms Jo is ordered by pay Cockcroft & Co Ltd \$3,000.00 plus GST towards its legal costs and \$105.00 as disbursements.

Eleanor Robinson
Member of the Employment Relations Authority

³ [2005] 1 ERNZ 808

⁴ [2001] ERNZ 305