

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2015] NZERA Wellington 27
5525003

BETWEEN	JUST PLANTS LIMITED Applicant
AND	DANIEL SMITH AND RENTOKIL INITIAL LIMITED Respondents

Member of Authority: P R Stapp

Submissions received by: 22 January 2015 (in writing from the parties)

Determination: 20 March 2015

COSTS DETERMINATION OF THE AUTHORITY

[1] The Authority reserved costs in [2014] NZERA Wellington 116. The respondents successfully defended claims made against them by Just Plants Limited in regard to injunctions for the enforcement of a restraint of trade provision, and claims of aiding and abetting breaches. Rentokil Initial Limited is seeking costs and has asked for an up lift on the daily rate. The sum claimed is \$10,500 plus \$658.60 disbursements for travel.

[2] The applicant opposes the claim.

[3] Costs are determined pursuant to clause 15 of Schedule 2 of the Employment Relations Act. 2000. In accordance with current practice costs are assessed as a matter of principle¹ and on a daily rate of \$3,500. In practice costs are dealt with differently than in the Employment Court because of the Authority being an

¹ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808

investigatory body to resolve employment relationship problems. It has been spelt out that costs in the Authority should be modest.²

[4] There is nothing in this matter that means that the daily rate should be uplifted, and certainly not to the extent requested by the Rentokil Initial Limited (Rentokil). My reason for this is that there was a genuine matter brought before the Authority for enforcement that included Rentokil. The fact that Rentokil was successful in defending the claim means that costs follow the event, and as Rentokil was represented I accept costs have been incurred.

[5] Other reasons for my decision are

- a. That there was an open letter dated 6 November 2014 to try and settle and was an attempt to reasonably resolve the problem. As such that would be a reasonable action usually associated with this type of matter, but not significant enough to up lift the tariff, I hold.
- b. That the investigation meeting was scheduled for one day and there was time available for submissions.
- c. That the parties were prepared in advance of the investigation meeting that meant the meeting was orderly and efficient.
- d. That there were genuine matters for determination, particularly in regard to on-going rights that benefitted all the parties and provided them with some certainty.
- e. That the travel in the disbursements claim has not been specified. If it involves the travel costs for Counsel (from Auckland) I do not accept the claim is reasonable when there would have been representatives available in Wellington that could have covered the matter and helped save such costs. Also, Rentokil should meet its own costs for attendees who were involved to give evidence and to observe. This cost should not be visited on the applicant.

[6] My assessment of a reasonable contribution to costs is \$3,500.

² *Booth v Big Kahuna Holdings Limited* [2015] NZEmpC 4 paragraph [6]

Order of the Authority on costs

[7] Just Plants Limited is to pay Rentokil Initial Limited \$3,500 contribution to its costs.

P R Stapp
Member of the Authority