



# New Zealand Employment Relations Authority Decisions

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## Jo v Cockcroft & Co Ltd (Auckland) [2011] NZERA 901; [2011] NZERA Auckland 410 (20 September 2011)

Last Updated: 22 April 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2011] NZERA Auckland 410  
5341161

BETWEEN SUNOK JO Applicant

AND COCKCROFT & CO LTD Respondent

Member of Authority: Eleanor Robinson

Costs Submissions 1 September 2011 and 7 September 2011

Determination: 20 September 2011

**COSTS DETERMINATION OF THE AUTHORITY**

[1] By determination [2011] NZERA Auckland 348 the Authority found that the Respondent, Cockcroft & Co Ltd, had followed due and proper process in making the Applicant, Ms Jo, redundant.

[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 the parties have filed submissions in respect of costs.

[3] This matter involved slightly less than 1 day of an Investigation Meeting, with written submissions being submitted subsequent to that. Mr Walker, on behalf of the Respondent, citing actual costs of \$10,000 (excluding GST) and disbursements of \$105.00, is seeking a contributory award of \$9,305.00 towards the actual costs.

[4] Mr Walker, in support of the level of the claim by the Respondent, submitted for the consideration of the Authority that account should be taken of the overall conduct of the Applicant in that:

the Applicant had not taken into consideration the additional 3 months notice period, which was in effect an additional \$18,000.00 in the nature of an ex-gratia payment; and

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*<sup>1</sup>.

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

[10] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>3</sup> that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*<sup>4</sup> 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**

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