

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 421  
5394316

BETWEEN	CAROLYN JONES Applicant
A N D	FORCE 10 LIMITED First Respondent
A N D	BVS FRESH PRODUCE LIMITED Second Respondent

Member of Authority: James Crichton

Representatives: Dave Vinnicombe, Advocate for Applicant  
No appearance for First or Second Respondents

Submissions Received: 20 August 2013 from Applicant  
No submissions from either Respondent

Date of Determination: 16 September 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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**The substantive determination**

[1] The substantive determination issued as [2013] NZERA Auckland 323 on 29 July 2013. In that determination, Ms Jones was entirely successful and the Authority concluded that the first and second respondents were each equally culpable.

[2] Costs were reserved and a timetable set. In the result, submissions have been received only from the applicant; the first respondent advised the Authority it did not agree with the Authority's decision and the second respondent indicated it was endeavouring to settle costs with the applicant by agreement.

[3] The applicant has now requested that the Authority fix costs and this determination does that.

### **The claim for costs**

[4] Ms Jones seeks costs of \$3,000, that amount to be paid as to half by each of the respondents.

[5] The submissions for Ms Jones proceed on the footing that her evidence was taken in a half day's investigation meeting and the evidence for the respondents was provided by affidavit thereafter. Accordingly, Ms Jones considers that a full day's notional daily rate contribution is appropriate.

### **The response**

[6] As already indicated, there has been no response to Ms Jones' submissions and as the time for the receipt of those submissions has now passed, the Authority is satisfied it can proceed to fix costs.

### **Discussion**

[7] The law on costs setting in the Authority is well settled and need not be recited here.

[8] This was a slightly unusual matter in that, on the face of it, there were two potential respondents each of whom Ms Jones had a viable claim against. In the result, that was the Authority's finding.

[9] The procedural aspects were also a trifle unusual in that neither respondent attended the investigation meeting. The first respondent was excused from attendance by the Authority but the second respondent was not and could easily have attended the investigation meeting but for whatever reason did not.

[10] Notwithstanding the absence of the respondents from the Authority's investigation meeting, the Authority gave both respondents the opportunity to provide evidence via affidavit and this opportunity was taken up by both respondents.

[11] The Authority accepts Ms Jones' submission that her evidence took half a day to hear and that it is not unreasonable to allow a further half day for the assessment of the affidavit evidence subsequently provided by the respondents.

## **Determination**

[12] Ms Jones seeks a contribution to her costs of \$3,000. That is a realistic figure falling inside the present daily rate usually applied by the Authority and on that basis, as Ms Jones was entirely successful in her claim, and is on normal principles entitled to a contribution to her costs from the unsuccessful parties, the Authority directs that \$3,000 is to be contributed to Ms Jones' costs, \$1,500 coming from the first respondent and \$1,500 coming from the second respondent.

James Crichton  
Member of the Employment Relations Authority