

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2017] NZERA Auckland 137  
3001371

BETWEEN                      WILLIAM STEWART KISS  
   Applicant  
  
A N D                              YEOMAN INDUSTRIES  
   LIMITED  
   Respondent

Member of Authority:      Anna Fitzgibbon  
  
Representatives:              Oliver Christeller, Counsel for Applicant  
   No appearance for the Respondent  
  
Date of Determination:      4 May 2017

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**COSTS DETERMINATION OF THE  
EMPLOYMENT RELATIONS AUTHORITY**

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**Yeoman Industries Limited (Yeoman Industries) is ordered to contribute \$3,000 towards the costs of Mr William Kiss and to reimburse the filing fee of \$71.56, both within 14 days of the date of this determination.**

**The substantive determination**

[1] In an oral determination of the Authority, issued on 10 April 2017, with a written record on the same date<sup>1</sup> the Authority determined that:

- (a) Mr William Kiss was unjustifiably constructively dismissed from his employment by Yeoman Industries.
- (b) Mr Kiss was awarded the following sums and remedies:
  - (i) Reimbursement of wages pursuant to s.128 of the Employment Relations Act 2000 (the Act) totalling \$42,501 gross.

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<sup>1</sup> [2017] NZERA Auckland 109 3001371

- (ii) Compensation of \$17,000 for humiliation, loss of dignity and injury to feelings in respect of his unjustifiable constructive dismissal pursuant to s.123(1)(c)(i) of the Act
- (c) Costs were reserved. Mr Kiss was given 14 days in which to provide the Authority with details of costs in relation to this matter.

### **Costs Determination**

[2] On 13 April 2017, Mr Christeller filed a memorandum seeking costs on behalf of the Applicant together with a supporting invoice. Yeoman Industries was provided with a copy of the memorandum as to costs and given an opportunity to file a response but failed to do so.

[3] Mr Kiss seeks costs of \$4,025 including GST, plus \$71.56 including GST for disbursements.

### **The Authority's daily costs tariff**

[4] For matters filed in the Authority from 1 August 2016, the Authority's normal daily tariff increased from \$3,500 to \$4,500 for the first day of an investigation meeting. For each subsequent day of an investigation meeting the Authority's normal daily tariff remains at \$3,500<sup>2</sup>. The matter was filed in the Authority on 14 December 2016 and therefore the new costs regime applies.

### **The Authority's power to award costs**

[5] The Authority's power to award costs arises from Schedule 2, clause 15 of the Act. This confers a wide discretion on the Authority to award costs on a principled basis.

[6] The full Employment Court decision in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*<sup>3</sup> sets out the principles that apply to awards of costs in the Authority. The principles are so well established that there is no need for them to be repeated.

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<sup>2</sup> Practice Note 2, Costs in the Employment Relations Authority

<sup>3</sup> [2005] ERNZ 808, para 44

[7] The general principle is that costs follow the event, and there is no reason to depart from that principle in this case. Mr Kiss was successful in his claim and should be awarded costs. Mr Christeller submitted that Mr Kiss' actual costs totalled \$5,750 plus disbursements. Mr Christeller attached an invoice in support.

[8] The Employment in *Carter Holt Harvey v. Eastern Bays Independent Industrial Workers' Union & Ors*<sup>4</sup> observed that a notional daily tariff approach, which was to be adjusted in a principled way, was best suited to the Authority's unique jurisdiction. This approach has been affirmed by the Employment Court in *Fagotti v. Acme & Co.*<sup>5</sup>.

[9] The investigation meeting took approximately half a day in the Authority, or 4 hours. Based on the Authority's daily tariff, this would amount to the sum of \$2,250. Mr Christeller has made a submission that the Authority should reimburse Mr Kiss 70% of actual costs incurred, which amounts to \$4,025, including GST. Mr Christeller seeks an uplift of the Authority's daily tariff as a result of the failure by Yeoman Industries to engage with the Authority or with mediation services.

[10] Obviously, there was no representation by Yeoman Industries at the investigation meeting and no response to the memorandum as to costs. I consider a small uplift to be appropriate in all the circumstances. Accordingly, I order costs of \$3,000 to be paid by Yeoman Industries to Mr Kiss within 14 days of the date of this determination.

[11] I order Yeoman Industries to reimburse Mr Kiss the cost of the filing fee of \$71.56 within 14 days of this determination.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**

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<sup>4</sup> [2011] NZEmpC 13

<sup>5</sup> [2015] NZEmpC 135