

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2013] NZERA Auckland 3
5361819**

BETWEEN SASI KANTA
 Applicant

AND GRIFFIN'S FOODS LIMITED
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Applicant in person
 Lewis Turner, Counsel for Respondent

Submissions received: None from Applicant
 7 December 2012 from Respondent

Determination: 3 January 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination [2012] NZERA Auckland 393 the Authority found that the Applicant, Ms Sasi Kanta, had not raised a personal grievance within the statutory 90 day time limit pursuant to s 114 (1) of the Employment Relations Act 2000 (the Act).

[2] The Authority further determined that there had not been a failure on the part of Ms Kanta's union, the NZ Amalgamated Engineering, Printing and Manufacturing Union (Inc) (EPMU) to raise the grievance on her behalf such as to allow the personal grievance to be heard outside the statutory 90 day time limit.

[3] The Respondent, Griffin's Foods Limited (GFL) was wholly successful and is entitled to a contribution towards its actual costs. 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 GFL has filed submissions in respect of costs.

[4] This matter involved slightly in excess of half a day of an investigation meeting with written submissions being filed subsequent to that. Mr Turner, on behalf of GFL, is seeking a contributory award of \$7, 875.00 towards the actual costs.

Submissions for the Respondent

[5] Mr Turner in support of the level of costs claimed cites as significant factors to be taken into consideration by the Authority the unusual features of the case which included:

- The extraordinarily protracted nature of the claim, including wasted costs involved in numerous teleconferences and adjournments, all caused by the conduct of the Applicant;
- The allegations advanced by the Applicant, which were untrue and inconsistent even with correspondence drafted by her own solicitors; and
- That the Applicant proceeded with pursuing her personal grievance claims against the Respondent in the face of advice from the EPMU and her solicitors that her personal grievance claims were without merit, putting the Respondent to the unnecessary cost of defending the claim.

Principles

[6] 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.*

[7] Costs are at the discretion of the Authority, as observed by the current Chief Judge Colgan in *NZ Automobile Association Inc v McKay*¹.

[8] The principles and the approach adopted by the Authority on which an award of costs is made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*².

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

[9] 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.

[10] Having had regard to the principles set out in *Da Cruz*, the time taken for the Investigation Meeting, and the conduct of the parties, I consider that a contributory award towards the Respondent’s actual costs is reasonable.

Determination

[11] Adopting the notional daily tariff rate of the Authority as \$3,500.00, and the fact that the Investigation Meeting lasted more than half a day, I take the starting point for costs as \$2,500.00. From that point I take into consideration the following observation by the Employment Court:⁵

The danger that tariffs may be unduly rigid can be avoided by adjustments either up or down in a principled way without compromising the Authority’s modest approach to costs.

[12] I consider it appropriate to take the factors identified by the Respondent into consideration in light of the fact that these issues had been identified by the Authority in the determination. I therefore award an additional \$2,000.00. I order Ms Kanta to contribute \$4,500.00 towards GFL’s actual costs.

Eleanor Robinson
Member of the Employment Relations Authority

³ [2005] 1 ERNZ 808

⁴ [2001] ERNZ 305

⁵ Ibid at para [46]