



[2] A substantive investigation took place. In its substantive determination dated 21 December 2018 the Authority did not find in favour of the applicant. Costs were reserved and a timetable set for an exchange of submissions. The Authority has now received submissions on behalf of the applicant and respondent.<sup>2</sup>

### **The respondent's submissions**

[3] Mr Brookes in his submissions refers to the power the Authority has to award costs under clause 15 of schedule 2 of the Employment Relations Act 2000 (the Act). He refers the Authority to the well-established principles set out by the full Court of the Employment Court in *PBO Limited (formerly Rush Security) v De Cruz*<sup>3</sup> that he submits have particular relevance to this application. These include the discretion as to whether the costs would be awarded and in what amount and that the discretion is to be exercised in accordance with principle and not arbitrarily. Further that costs generally follow the event and are not to be used as a punishment or expression of disapproval.

[4] There was also reference to the daily tariff against which costs are frequently judged. For matters lodged in the Authority from 1 August 2016 the daily tariff is \$4,500 for the first day of the matter and \$3,500 for any subsequent day.

[5] Mr Brookes submitted that NZ Post was successful in defending the interim reinstatement application and the substantive matter and seeks a contribution towards its costs for two days in the Authority.

[6] Although “without prejudice save as to costs offers” were made to the applicant to settle his claims and were rejected the respondent did not intend to rely on these to seek an uplift to the daily tariff. The claim is based on the normal daily tariff as set out below by Mr Brookes in his submissions.

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<sup>2</sup> *Lambert v NZ Post* [2018] NZERA 198

<sup>3</sup> *PBO Limited v De Cruz* [2005] ERNZ 808 at [44].

<b>Event</b>	<b>Time Occupied</b>	<b>Daily Rate</b>	<b>Value</b>
Application for interim reinstatement	0.5 of a day	\$3,500	\$1,750
First day of investigation meeting	1 day	\$4,500	\$4,500
Second day of investigation	0.5	\$3,500	\$1,750
<b>Total</b>	<b>2 days</b>		<b>\$8,000</b>

[7] Mr Brookes observed that the respondent’s actual legal costs substantially exceeded the amount sought of \$8,000.

### **The Applicant’s Submissions**

[8] Mr Yarrall on behalf of the applicant seeks an order that costs lie where they fall.

[9] He confirmed that the Postal Workers Union (the Union) would indemnify the applicant as to costs and they would not be the liability of the applicant. He submits that some claims were withdrawn by the applicant and the hearing was shortened as a result.

[10] Mr Yarrall submits that the respondent is a large well-resourced State Owned Enterprise and that the Union a “small union with limited resources”. He submits that a costs determination against the Union would not be conducive towards “harmonious industrial relations”.

### **Financial information on receipt of Mr Yarrall’s submissions**

[11] The Authority asked Mr Yarrall if the Union would be prepared to provide some financial information. Mr Yarrall agreed. By agreement the information was disclosed to Counsel for the respondent only. There was no request from the respondent’s counsel to the Authority to make any orders for disclosure to the respondent.

[12] I make an order prohibiting from publication the statement of financial performance of the Postal Workers Union under clause 10 of Schedule 2 of the Act.

## **Determination**

[13] Costs generally follow the event. I do not find that the quality of the future relationship between the Union and the respondent is a matter that should properly be given weight in the exercise of my discretion as to costs. This was a personal grievance and not a dispute or bargaining type matter where that submission would have more strength.

[14] I accept from the financial records I was provided with that the Union has limited assets but they will not be completely diminished by an award in the range that Mr Brookes seeks in his submissions. There are funds available to meet an award of costs.

[15] I am not persuaded that costs should not follow the event. The respondent was successful in both the interim and substantive matter and is entitled to consideration by the Authority of its request for a contribution towards its costs.

[16] I accept an award on the basis of half a day's tariff for the application for interim reinstatement of \$1,750 is fair and reasonable. The respondent lodged a number of affidavits and made comprehensive submissions at the investigation meeting all on short notice.

[17] I accept that an award on the basis of the daily tariff for one and a half days for the substantive matter is fair and reasonable. I agree with Mr Yarrall's submission that some claims were withdrawn or modified by the applicant and the three days originally allocated to the substantive matter were not required. Preparation with respect to statements of evidence for the respondent was reduced somewhat because of the affidavit evidence but the claim by the applicant remained reasonably far reaching and there were a large number of documents. Submissions were again comprehensive and delivered on the second day.

[18] I find viewed overall that the claim for costs by the respondent of \$8000 based on tariff is fair and reasonable in all the circumstances and that an award should be made on that basis.

[19] Although the award will be met by the Union it is appropriate to make the order in the names of the original parties rather than join the Union to the proceedings.

[20] I order Ken Lambert to pay to New Zealand Post Limited the sum of \$8000 being costs.

Helen Doyle  
Member of the Employment Relations Authority