

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2014] NZERA Auckland 320
5421476**

BETWEEN MANFRED LANGE
 Applicant

AND EFI NEW ZEALAND LIMITED
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Dean Organ, Advocate for Applicant
 Richard Upton, Counsel for Respondent

Investigation Meeting: 10 & 28 April 2014 at Auckland

Submissions received: 21 July 2014 from Applicant
 14 July 2014 from Respondent

Determination: 21 July 2014

DETERMINATION OF THE AUTHORITY

[1] By determination [2014] NZERA Auckland 253 the Authority Member found that the Applicant, Mr Manfred Lange, was entitled to a further entitlement to an incentive bonus for 2011, unpaid Kiwisaver and holiday payment on the bonus payment from the Respondent, EFI New Zealand Limited (EFI).

[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] I undertake the determination of costs in this matter at the request of the Chief of the Authority pursuant to s 166(2)(b) of the Employment Relations Act 2000 (the Act).

Costs

[4] This matter involved approximately a day and a half of an investigation meeting.

Submissions of the Parties

[5] Mr Upton submits on behalf of the Respondent that whilst Mr Lange was successful in his claim against EFI, that success was very limited and that EFI successfully defended the vast majority of Mr Lange's claims.

[6] On the basis that it is a principle that costs should follow the event, EFI claims a contribution to costs in the sum of \$4,500.00.

[7] Mr Organ, on behalf of Mr Lange, submits that it was always clear that wages were due to Mr Lange, and that some of these were paid to Mr Lange only after proceedings had been filed and briefs filed by the parties. Further that there is no evidence that the due wages would have been paid but for the proceedings being commenced by the Applicant.

[8] The Applicant was also successful in part in his claim for unpaid bonus for 2011, unpaid Kiwisaver and holiday payment on the bonus payment.

[9] On that basis the Applicant is seeking a contribution to costs in the sum of \$6,000.00 plus GST.

Principles

[10] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) 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.

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

[12] 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

[13] 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.”

Determination

[14] 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 one and a half day investigation meeting this would normally equate to \$5,250.00.

[15] The normal rule is that costs follow the event. Member Anderson in determination [2014] NZERA Auckland 253 made reference to Mr Lange’s limited success and the resources utilised by EFI in defending the matter, factors he found made it: “*arguable as to where the costs should lie*”.

[16] Having considered all of the circumstances, I believe that justice is best served in this case by awarding Mr Lange as the successful party a small contribution towards his costs, having a mind to his limited success.

[17] I order EFI to contribute \$500.00 towards Mr Lange’s actual costs, pursuant to clause 15 of Schedule 2 of the Act.

Eleanor Robinson
Member of the Employment Relations Authority

³ [2005] 1 ERNZ 808

⁴ [2001] ERNZ 305