

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**[2013] NZERA Auckland 80  
5373561**

BETWEEN                      ANDREW LAWRIE  
Applicant

AND                              AIR LIQUIDE NEW ZEALAND  
LIMITED  
Respondent

Member of Authority:        Eleanor Robinson  
Representatives:              Helen White, Counsel for Applicant  
    Brandon Brown, Counsel for Respondent  
Submissions received:        None from Applicant  
    14 February 2013 from Respondent  
Determination:                5 February 2013

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] By determination [2013] NZERA Auckland 32 the Authority found that the Applicant, Mr Andrew Laurie, had not been unjustifiably dismissed or unjustifiably disadvantaged by the Respondent, Air Liquide New Zealand Limited (Air Liquide).

[2] Air Liquide 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 Air Liquide has filed submissions in respect of costs.

[3] This matter involved one and a half days of an investigation meeting. Mr Brown, on behalf of Air Liquide, citing actual costs of \$15,737.50 plus GST, is seeking a contribution towards costs of \$8,000.00.

[4] In support of his application, Mr Brown submits the following reasons:

- (a.) The Investigation Meeting continued over a 2 day period;
- (b.) The conduct of Mr Lawrie increased costs to the Respondent as a result of:
  - i). The request late on Friday 7 September 2012 to adjourn the Investigation Meeting set for Tuesday 11 September 2012;
  - ii). Resulting in the Respondent having to attend further telephone conferences on 7 September and 2 October 2012 as a result of the adjournment
  - iii). Advising Air Liquide on 13 September 2012 that he had engaged new counsel; and
  - iv). Submitting further medical evidence after the original timetabled deadline.
- (c.) Mr Lawrie had been put on notice of the cost implications of his actions in adjourning the investigation meeting during a telephone conference with the Authority on 7 September 2012.

### *Principles*

[5] 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.*

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

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

[8] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>3</sup> that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*<sup>4</sup> at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.

[9] It is also a principle that conduct which has increased costs unnecessarily can be taken into consideration and thereby increase the notional daily tariff rate.

### **Determination**

[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 Applicant’s actual costs is reasonable.

[11] Adopting the notional daily tariff rate of the Authority as \$3,500.00, I take that as the starting point for costs. From that point I take into consideration the following observation by the Employment Court:<sup>5</sup>

*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] The Investigation Meeting involved a day and a half, which at the notional daily rate equates to a sum of \$5,250.00. From this starting point, I consider it appropriate to take the factors identified by the Respondent into consideration and award an additional \$1,750.00. I order Mr Lawrie to contribute \$7,000.00 towards Air Liquide’s actual costs.

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<sup>1</sup> [1996] 2 ERNZ 622

<sup>2</sup> [2005] 1 ERNZ 808

<sup>3</sup> [2005] 1 ERNZ 808

<sup>4</sup> [2001] ERNZ 305

<sup>5</sup> *Ibid* at para [46]

[13] Given Mr Lawrie's personal circumstances at the time of the Investigation Meeting it is possible that an arrangement may need to be made for Mr Lawrie to pay the costs by way of instalments. Leave is reserved for the parties to revert to the Authority for future orders if such arrangements are sought and cannot be agreed.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**