

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2018] NZERA Auckland 142
3014073 & 3016915**

	BETWEEN	VERBENA MAANGI Applicant
	AND	WHISTLER ORCHARDS LIMITED Respondent
Member of Authority:	Eleanor Robinson	
Submissions received:	None from Applicant 11 April 2018 from Respondent	
Determination:	04 May 2018	

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 17 April 2018 [2018] NZERA Auckland 119 it was determined that the Respondent, Whistler Orchards Ltd (Whistler Orchards) had breached clause 8 but not clauses 11 or 16 of the Record of Settlement entered into by the parties.

[2] It was further determined that the Applicant, Ms Maangi, had breached clauses 5, 6 and 4 of the Record of Settlement.

[3] Both parties were ordered to pay penalties, Whistler Orchards in the amount of \$300.00 to the Crown, and Ms Maangi in the sum of \$6,000.00, of which \$5,000.00 was ordered to be paid to Whistler Orchards.

[4] In that determination costs had been reserved in the hope that the parties would be able to resolve this issue between themselves. Unfortunately, they have been unable to do so, and the Respondent has filed submissions in respect of costs.

[5] The matter involved a one day Investigation Meeting.

[6] The Respondent is seeking a contribution to its costs at the daily tariff rate in the sum of \$4,500.00.

Principles

[7] 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.*

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

[9] 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 as confirmed in *Fagotti v Acme & Co Ltd*.³

[10] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*⁴ that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*⁵ at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.”

[11] It is also a principle that costs are not to be used as a punishment or expression of disapproval of the unsuccessful party’s conduct.

Determination

[12] A tariff based approach is that usually adopted by the Authority, which has the discretion to raise or lower the tariff, depending upon the circumstances. For a one day investigation meeting the tariff would normally equate to \$4,500.00.

[13] Costs normally follow the event. In this case, whilst the Applicant was successful in respect of one aspect of her claim that the Respondent had breached the Record of Settlement, she was unsuccessful in the other aspects her claim.

[14] Furthermore I observe that the breach by the Respondent was minor and technical in nature rather than deliberate.

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2015] NZEmpC 135 at [114]

⁴ [2005] 1 ERNZ 808

⁵ [2001] ERNZ 305

[15] The Respondent was by contrast wholly successful in all aspects of its counterclaim.

[16] Taking these considerations fully into account, I reduce the tariff accordingly.

[17] Within 28 days of the date of this determination, Ms Maangi is ordered to pay Whistler Orchards the sum of \$4,000.00 costs, pursuant to clause 15 of Schedule 2 of the Act.

Eleanor Robinson
Member of the Employment Relations Authority