

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 30/10
5153853

BETWEEN ANNA MacARTHUR
Applicant

AND AIR NEW ZEALAND LTD
Respondent

Member of Authority: James Wilson

Representatives: Lisa Keys for the applicant
Kevin Thompson for the respondent

Costs submissions received: 11 & 16 November 2009 from the applicant
29 October & 12 November 2009 from the respondent

Determination: 26 January 2010

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In a determination dated 5 October 2009 I found that Ms Anna MacArthur did not have a personal grievance against her former employer, New Zealand Limited. In that determination I reserved the question of costs in the hope that the parties would be able to settle this issue between themselves. Unfortunately they have been unable to do so and Air New Zealand have now filed a memorandum seeking a costs order in their favour.

[2] On behalf of Air New Zealand Mr Thompson cites the principles set out in the Employment Court decision in *PBO (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808. Relying on those principles Mr Thompson suggests that an appropriate award of costs to Air New Zealand should be *in the order of \$3000 per day (being a total of \$6000) inclusive of GST, which figure is very much in the middle of the range of costs awarded in cases of this type*. Air New Zealand do not seek reimbursement of disbursements incurred.

[3] In her submissions in response Ms Keys, while accepting that Air New Zealand would usually be entitled to a costs award, argues that *\$6000 would be a considerable burden on the association's finances*. She points out that the applicant's application for reinstatement was considered by the Authority as part of its substantive investigation and that this resulted in an efficient use of all parties resources and time. She also points out that the investigation meeting did not occupy two full hearing days. She suggests that, under all circumstances:

...due to the nature of the case, disparity of resources and the ongoing nature of the relationship between FARSA and the Company it would be appropriate for the Authority to order costs to lie where they fall in this instance.

Determination

[4] Despite Ms Keys arguments I can see no reason to depart from the Authority's usual principles in this case. I do accept that the investigation meeting did not occupy two full days and it is therefore appropriate for the award to be at the lower end of the Authority's usual daily "tariff". (A review of recent costs awards suggests that the current tariff is in the order of \$3000 for each day of meeting). **Anna MacArthur is ordered to pay Air New Zealand Limited the sum of \$5000, inclusive of GST as a contribution towards Air New Zealand's costs.**

James Wilson

Member of the Employment Relations Authority