

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2011] NZERA Auckland 433  
5309042 and 5312642

BETWEEN                      LYDIA MAOATE  
   Applicant

AND                              ALLIED INVESTMENTS  
   LIMITED T/A ALLIED  
   SECURITY  
   Respondent

Member of Authority:      Robin Arthur

Representatives:           Paul Blair for the Applicant  
   Diana Hudson for the Respondent

Submissions received:     21 September 2011 from the Respondent  
   28 September 2011 from the Applicant

Determination:              5 October 2011

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] Allied Security seeks costs for its involvement in two Authority investigations in which it was the successful party. In the first matter Lydia Maoate was declined an interim injunction she sought to stop the company going ahead with a disciplinary inquiry into her actions.<sup>1</sup> In the second matter Ms Maoate was unsuccessful in a personal grievance application about her dismissal on 30 June 2010.<sup>2</sup>

[2] The warrant of the Authority member who investigated these matters has expired. Costs were reserved in her two determinations and the parties' submissions on that matter have been referred to me for determination.

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<sup>1</sup> AA289/10 (18 June 2010, Member Oldfield)

<sup>2</sup> [2100] NZERA Auckland 368.

[3] Allied Security says its legal costs totalled \$2018 for the interim matter and \$9918 for the substantive matter. It sought an order for indemnity costs on the grounds that Ms Maoate's union, Unite, had pursued her case for the ulterior motive of increasing membership in the security industry. Alternatively, it sought an award above the notional daily rate on four grounds – firstly, Ms Maoate was represented by her union and had no financial consequences from pursuing a claim found to unmeritorious; secondly, the interim investigation was held over parts of two days and the one-day long investigation meeting on the substantive grievance carried on until 6pm; thirdly, the company's witnesses were based in Auckland, Hamilton and Dunedin with consequent increased costs in preparation for the investigation; and, fourthly, additional costs were incurred addressing the application of the Protected Disclosures Act 2000, an issue not raised until during the investigation meeting. If indemnity costs were not awarded, Allied Security sought an order for \$8000.

[4] Ms Maoate, through her representative, sought an order that costs lie where they fall or be set at no higher than \$500. She submitted that as her union had "played a significant role" in influencing some of her conduct, the costs award should not be punitive. Otherwise she relied on the principles regarding costs in the Authority as summarised by a full bench of the Employment Court in *PBO v Da Cruz* [2005] ERNZ 808.

[5] I do not consider the submissions and the determinations disclose sufficient grounds for an award of indemnity costs. While Allied Security considered the union had ulterior motives in assisting Ms Maoate's case, she was dismissed and was entitled to pursue her rights in the same way as any other individual worker and with only the usual risk as to costs if unsuccessful, that is having to pay a reasonable contribution to reasonably incurred costs of the successful party.

[6] Costs in this matter, I think, may reasonably be set on the basis of a notional daily rate, adjusted upwards and downwards to take account of the particular circumstances of the case and the application of the relevant principles.

[7] Taking \$3000 as the current typical daily tariff in the Authority – and allowing half a day for the interim matter and a day for the substantive matter – the starting point is \$4500.

[8] Of the factors identified by Allied Security as reasons for upward adjustment of that amount, I agree this is warranted for the long investigation day and extra research on a legal issue raised late in the piece. Other factors must yield to the application of the principles requiring costs awards to be modest and not used as punishment or and expression of disapproval of the unsuccessful party's conduct.

[9] Costs however do follow the event of its success in both investigations and Allied Security is entitled to a reasonable contribution to costs reasonably incurred in them. I fix \$5000 as the amount Ms Maoate must pay in costs to Allied Security.

[10] There was no information about Ms Maoate's ability to meet an award of that level. I have assumed her union will have agreed to indemnify her for some or all of the value of the costs award that I expect her union and legal representatives would have anticipated and advised her to expect in the event of being unsuccessful in her applications to the Authority. If that is not the case and Ms Maoate must bear the costs award alone, she may need to seek an arrangement to pay it in instalments. If that is genuinely needed, and the parties cannot agree on those arrangements, leave is reserved to revert to the Authority for further orders on that point.

Robin Arthur  
Member of the Employment Relations Authority