



# New Zealand Employment Relations Authority Decisions

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## Marks v University of Auckland (Auckland) [2011] NZERA 883; [2011] NZERA Auckland 240 (8 June 2011)

Last Updated: 19 April 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2011] NZERA Auckland 240  
5331639

BETWEEN WILLIAM MARKS Applicant

AND UNIVERSITY OF AUCKLAND Respondent

Member of Authority: Eleanor Robinson

Costs Submissions 18 and 27 May 2011

Determination: 8 June 2011

**COSTS DETERMINATION OF THE AUTHORITY**

[1] By determination [2011] NZERA Auckland 160 the Authority found that Mr

Williams had been unjustifiably dismissed by the University of Auckland.

[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] Mr Howard-Smith, on behalf of Mr Marks, citing actual costs of \$9,825.60 (including GST, and disbursements) is seeking a contributory award of \$3,500.00 plus GST towards the actual costs. I note that Mr Howard-Smith submits that the actual costs have been significantly discounted.

[4] Mr France for the Respondent submits that as the case involved no complex issues of fact or law, and the investigation was conducted in a speedy and efficient way, a costs award of \$2,000.00 would be appropriate.

[5] The matter involved 1 day of meeting time. The principles applicable to awards of costs in the Authority are well established. It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>1</sup> that costs are modest. A tariff based approach is that usually

adopted by the Authority, which has the discretion to raise or lower the tariff, depending on

1 [\[2005\] NZEmpC 144](#); [\[2005\] 1 ERNZ 808](#)

the circumstances. For a 1 day Investigation Meeting this would normally equate to an award of \$3,000.00.

[6] Costs normally follow the event and Mr Marks was the successful party. However to some extent, both parties experienced some degree of success in this case, in that whilst I determined that Mr Marks had been unjustifiably dismissed, I also found there was some element of contribution by Mr Marks towards the situation in which he found himself.

[7] In these circumstances I do not consider it appropriate to use my discretion to raise or lower the usual tariff amount.

[8] Accordingly, the University of Auckland is ordered to pay Mr Marks \$3,000.00, as a contribution towards his costs pursuant to clause 15 of Schedule 2 of the [Employment Relations Act 2000](#).

[9] Mr Howard-Smith has claimed disbursements of \$44.00 but has not provided evidence of what constitutes these disbursements. Without evidence of actual disbursements, I am unable to assess whether such costs have been properly incurred, and consequently cannot award an amount in respect of disbursements.

**Eleanor Robinson**

**Member of the Employment Relations Authority**

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