

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**AA 214A/10
5275547**

BETWEEN

JUNIOR MARURAI
Applicant

AND

CARTER HOLT HARVEY
Respondent

Member of Authority: Eleanor Robinson

Costs submissions 13 and 17 May 2010

Determination: 30 September 2010

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] By determination AA 214/10 the Authority found that Mr Junior Marurai did not have a personal grievance against his former employer, Carter Holt Harvey Limited. In that determination costs were reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately they have been unable to do so, and both parties have filed submissions in respect of costs.

[2] On behalf of Carter Holt Harvey Limited, Mr France cites the principles in *CE of Department of Corrections v Tawhiwirang (No 2)*¹. Relying on those principles, Mr France suggests that an appropriate award of costs to Carter Holt Harvey Limited should be \$5,000.00, this being in excess of the minimum tariff of \$3,000.00 for one investigation day in the Authority. Mr France in reliance on the approach taken by Judge Shaw submits that recognition of preparation time, and the additional time and costs associated with written submissions, is appropriate.

¹ [2008] ERNZ 73

[3] Mr Marurai opposes the application, and, with supporting documentation, submits that any award of costs will cause undue hardship.

[4] Having familiarised myself with the case, I am unable to see anything exceptional about either the case or in the way the investigation was conducted.

[5] The respondent company is entitled to a contribution towards its actual costs.

[6] *PBO Ltd v Da Cruz*² sets out the principles to be applied by the Authority in exercising its costs discretion. The Employment Court observed:

[46] We find there is nothing wrong in principle with the Authority's tariff based approach, so long as it is not applied in a rigid manner without regard to the particular characteristics of the case. For example, even an award of costs based on a low daily rate may not be feasible where the liable party does not have the means to pay or, on the other hand, the daily rate may not adequately reflect the conduct of the parties or the preparation required in a particularly complex manner. 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.

[7] I accept from the information supplied that Mr Marurai is experiencing financial hardship and some allowance ought justly to be made for that in exercising the Authority's discretion. The case was a relatively straightforward one and the notional daily rate is an appropriate place to start.

[8] For a case of this kind \$2,500.00 is well within the boundaries of a notional daily rate. Making some allowance for financial hardship, I consider that \$2,000.00 is a reasonable contribution. Accordingly, Mr Marurai is ordered to pay Carter Holt

² [2005] 1 ERNZ 808

Harvey Limited \$2,000.00 costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

Eleanor Robinson
Member of the Employment Relations Authority