



[4] Mr Rooney seeks an order for costs of \$6,000, based on what he says were wasted costs incurred in the Authority prior to the filing of the application for removal. In the alternative, he says the Authority should take its more usual approach to costs, based on the decision in **PBO Limited v Da Cruz**<sup>2</sup>, and make an order for no more than \$250 calculated with reference to the length of time required for the Authority's hearing of the application and its usual daily rates.

### **Determination**

[5] Regarding the respondent's decision to resist the application for removal, I understood the resistance was based on its view that preliminary matters it had raised were such that the likely disposition of them meant the threshold for addressing the question of law would not be reached. Although it was unsuccessful on this point, I do not accept that means it should reasonably have accepted that the grounds for removal were made out. It was simply an unsuccessful party in the application.

[6] As for the submission in respect of wasted costs in the Authority, the reference was to activities of the kind summarised in [2] in the determination. It is unfortunate that the problem as originally filed did not reflect the true complexity of the matter. Although the Authority has a different procedure and takes a less formal approach than a court, that does not mean it can go as far as to ignore relevant legal issues. It took some time for the Authority and the parties to identify and shape the issues. Each party should bear its own costs in the Authority in that respect.

[7] What remains is an approach to costs based on the costs of the application for removal itself, and the principles to which Mr Rooney referred. The application took less than half a day to hear but involved more preparation and argument than is sometimes the case with applications for removal.

[8] For these reasons Fonterra is ordered to contribute to the applicant's costs in the sum of \$1,000.

R A Monaghan

Member of the Employment Relations Authority

---

<sup>2</sup> [2005] 1 ERNZ 808