

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 171A/07  
5052648

BETWEEN                      David Mosen  
   Applicant  
  
AND                                Anfield Engineering Limited  
   Respondent

Member of Authority:      Vicki Campbell  
  
Representatives:            Chris Grenfell for Applicant  
   Stephen Clews for Respondent  
  
Submissions received:      11 July 2007 from Applicant  
   21 June 2007 from Respondent  
  
Determination:              23 July 2007

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]        In a determination dated 12 June 2007 I found that Mr Mosen had not been dismissed from his position as a welder but rather, that he left the Whangarei worksite of his own volition without completing a trial he himself had initiated.

[2]        In my determination I reserved the question of costs and invited the parties to resolve the matter between them. They have been unable to do so and I am now in receipt of memorandum from both parties.

[3]        I have considered the submissions made by the parties and I am satisfied that the discretion under clause 15 of Schedule 2 of the Act ought to be exercised in favour of Anfield Engineering Limited.

[4]        The following principles are appropriate where the Authority is exercising its discretion in relation to costs (*PBO Ltd (formerly Rush Security Ltd) v Da Cruz*, [2005] 1 ERNZ 808):

- There is a discretion as to whether costs should be awarded and what amount;
- The discretion is to be exercised in accordance with principle;
- The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority;

- Equity and good conscience is to be considered on a case by case basis;
- Costs are not to be used as a punishment or as an expression of disapproval of an unsuccessful party's conduct although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award;
- It is open to the Authority to consider whether all or any of the parties costs were unnecessary or unreasonable;
- That costs generally follow the event;
- That without prejudice offers can be taken into account;
- That awards will be modest;
- That frequently costs are judged against a notional daily rate;
- The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[5] The respondent has incurred costs of \$2,953.12 plus disbursements of \$90.00 for a hearing which lasted less than one day. It seeks a contribution to those costs. The matter was not complex and the costs incurred are reasonable given the preparation required and the length of the hearing.

[6] Mr Mosen is required to pay to Anfield Engineering Limited the sum of \$750.00 including disbursements as a reasonable contribution to costs.

[7] An order is made accordingly.

Vicki Campbell

Member of the Employment Relations Authority