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Muirhead v Debec Management Limited (Auckland) [2018] NZERA 70; [2018] NZERA Auckland 70 (28 February 2018)

Last Updated: 18 March 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND		
		[2018] NZERA Auckland 70
		3010232
	BETWEEN	DOUGLAS MUIRHEAD Applicant
	AND	DEBEC MANAGEMENT LIMITED First Respondent
	AND	DEBEC BUILDING SOLUTIONS LIMITED Second Respondent
Member of Authority:	Vicki Campbell	
Representatives:	Kate Ashcroft for Applicant	
Holland Becket Lawyers for Respondent		
Submissions received:	15 January 2018 from Applicant No submissions from Respondent	
Determination:	28 February 2018	
COSTS DETERMINATION OF THE AUTHORITY		

A. Debec Management Limited and Debec Building Solutions Limited, jointly and severally, are ordered to pay to Mr Muirhead \$4,500 within 14 days of the date of this determination.

[1] In a determination dated 6 December 2017¹ I found Mr Muirhead was an employee of both Debec Building Solutions Limited and Debec Management Limited and ordered remedies and arrears of wages against both companies jointly. I declined to impose a penalty for breaches of good faith.

¹ [2017] NZERA Auckland 375.

[2] I reserved costs, indicating that if the parties were unable to resolve costs, both parties would have the opportunity to file cost memoranda and evidence. The parties have been unable to resolve the matter and Mr Muirhead has applied for a contribution to his costs.

Determination of costs

[3] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks reasonable.² The principles applying to costs are well settled and do not require

repeating.³

[4] An assessment of costs will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.⁴

[5] Despite setting out in my determination the information required if a party was seeking costs I have not been provided with a breakdown of how and when Mr Muirhead incurred his costs and therefore I am unable to assess whether the costs he incurred were reasonable.

[6] The investigation meeting took place over one day. The starting point for calculation of the daily tariff is \$4,500. Mr Muirhead seeks an uplift to take into account GST of \$675.

[7] The Court of Appeal has stated that GST is not an element of a costs award because the losing party is not paying for a service provided to it by the successful party. It is instead a matter for the exercise of discretion if a successful party has paid GST, but is not able to recover it.⁵ I will not be exercising my discretion to uplift for GST in this case.

² [Employment Relations Act 2000](#), Schedule 2, clause 15.

³ *PBO Ltd v Da Cruz* [\[2005\] NZEmpC 144](#); [\[2005\] 1 ERNZ 808](#), 819-820 and *Fagotti v Acme & Co Limited* [\[2015\] NZEmpC 135](#) at [\[106\]](#) – [108].

⁴ Practice Note 2, Costs in the Employment Relations Authority.

⁵ *New Zealand Venue and Event Management Ltd v Worldwide NZ LLC* [\[2016\] NZCA 282](#), [\(2016\) 23 PRNZ 260](#) at [\[12\]](#) and cited in *Nisha v LSG Sky Chefs New Zealand Ltd and 2ors* [\[2018\] NZEmpC 8](#) at [\[245\]](#).

[8] The investigation meeting took less than one day and was not a complex matter. In a Notice of Direction dated 16 June 2017 I reminded the parties that costs may be awarded against an unsuccessful party and that such costs had risen to \$4,500 for the first hearing day.

[9] Taking all the circumstances into account I consider it appropriate that Debec Management Limited and Debec Building Solutions Limited, jointly and severally, pay to Mr Muirhead the amount of \$4,500 as a contribution to his costs and that this payment be made within 14 days of the date of this determination.

Vicki Campbell

Member of the Employment Relations Authority

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