

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2018] NZERA Auckland 70  
3010232

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| BETWEEN | DOUGLAS MUIRHEAD<br>Applicant                            |
| AND     | DEBEC MANAGEMENT<br>LIMITED<br>First Respondent          |
| AND     | DEBEC BUILDING<br>SOLUTIONS LIMITED<br>Second Respondent |

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|-----------------------|--|
| Member of Authority:  | Vicki Campbell   |
| Representatives:      | Kate Ashcroft for Applicant<br>Holland Becket Lawyers for Respondent |
| Submissions received: | 15 January 2018 from Applicant<br>No submissions from Respondent     |
| Determination:        | 28 February 2018   |

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**COSTS DETERMINATION OF THE AUTHORITY**

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**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 2017<sup>1</sup> 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.

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<sup>1</sup> [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.<sup>2</sup> The principles applying to costs are well settled and do not require repeating.<sup>3</sup>

[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.<sup>4</sup>

[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.<sup>5</sup> I will not be exercising my discretion to uplift for GST in this case.

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<sup>2</sup> Employment Relations Act 2000, Schedule 2, clause 15.

<sup>3</sup> *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

<sup>4</sup> Practice Note 2, Costs in the Employment Relations Authority.

<sup>5</sup> *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