

- The State of Georgia, USA is the appropriate or natural forum (that is, a *forum conveniens*) to hear Mr Niezen's claim.
- Costs were reserved.

[2] A memorandum of costs was filed on behalf of Greenstone seeking a significant contribution towards costs incurred by it totalling \$15,294.57 (including GST) to defend Mr Niezen's claim. It is submitted on behalf of Greenstone that all costs incurred by it were reasonable and that it was required to instruct counsel in both New Zealand and in the USA to respond to Mr Niezen's claims.

[3] Mr Niezen opposes Greenstone's claim for costs and argues no evidence of costs incurred has been provided to the Authority by Greenstone and that there is no reason to deviate from the tariff based approach normally followed by the Authority. On that basis it is argued there was no investigation meeting held and that a reasonable costs award would be \$3,000 including GST in the circumstances.

[4] The Authority's power to award costs arises from Schedule 2, clause 15 of the Employment Relations Act (the Act). This confers a wide discretion on the Authority to award costs on a principled basis.

[5] The principles guiding the Authority's approach to costs are set out by the Full Employment Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*². Those principles were referred to by Mr Scott in his submission opposing costs. The principles are so well recognised, I do not need to restate them. However, the following principles highlighted in *PBO* are particularly relevant to this case, namely:

- There is a discretion as to whether costs should be awarded and as to the amount;
- Equity and good conscience is to be considered on a case by case basis;
- Costs are not to be used as punishment or an expression of disapproval of the unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account when inflating or reducing an award;

² [2005] 1 ERNZ 808

- It is open to the Authority to consider whether all or any of the parties' costs were unnecessary or unreasonable;
- Costs generally follow the event.

[6] The general principle is that costs follow the event, and I see no reason to depart from that in this case. Greenstone was successful in defending Mr Niezen's claim.

[7] Total costs incurred by Greenstone are claimed to be \$15,294.57 (including GST). No invoices were attached to support Greenstone's costs claim so it is difficult for the Authority to determine whether such costs are reasonable.

[8] On 29 October 2013, Greenstone filed a Notice in the Authority objecting to its jurisdiction to determine Mr Niezen's claim. No affidavit evidence was filed in support. A telephone conference was subsequently convened during which the parties agreed to a timetable for the filing of affidavit evidence and submissions regarding the issue of the Authority's jurisdiction. Greenstone raised an issue with regard to the service of the Statement of Problem and took no steps to file affidavit evidence in respect of the jurisdictional matter.

[9] On 2 April 2014, I issued a preliminary determination³ determining that Greenstone had been served with Mr Niezen's Statement of Problem and reserving costs. I also gave Greenstone a further opportunity to file affidavit evidence regarding the jurisdictional point. No award as to costs was made despite Mr Niezen being successful in arguing that there had been proper service of the Statement of Problem. These are matters which I consider go to the Authority's discretion to award costs.

[10] The Employment Court in *Carter Holt Harvey v. Eastern Bays Independent Industrial Workers Union & Ors*⁴ observed that a notional daily tariff approach, which was to be adjusted in a principled way, was best suited to the Authority's unique jurisdiction. I adopt that approach.

[11] The normal starting point for costs in the Authority is \$3,500 per day see *Fifita (aka Bloomfield) v. Dunedin Casinos Ltd*⁵. This matter required the Authority to consider affidavit evidence and to issue a preliminary determination as to proper

³ [2014] NZERA Auckland 121

⁴ [2011] NZEmpC 13

⁵ [2012] NZERA Christchurch 219

service of the Statement of Problem and a further determination as to jurisdiction. Greenstone seeks \$15,294.57 (including GST) towards its costs.

[12] For the reasons above, it is my view that an uplift in the normal daily rate is not warranted in the circumstances. I consider an appropriate award in the circumstances outlined above to be \$3500. Accordingly, I order Mr Niezen to contribute \$3,500 towards the costs of Greenstone.

Anna Fitzgibbon
Member of the Employment Relations Authority