

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2020] NZERA 407
3077352

BETWEEN	NOEL LEEMING GROUP LIMITED Applicant
AND	MICHAEL SAUNDERS Respondent

Member of Authority:	Nicola Craig
Representatives:	June Hardacre, counsel for the applicant The respondent in person
Investigation Meeting:	On the papers
Submissions received:	18 September 2020 from the applicant Nothing received from the respondent
Date of determination:	8 October 2020

COSTS DETERMINATION OF THE AUTHORITY

- A. Michael Saunders is ordered to pay to Noel Leeming Group Limited as a contribution towards its costs the sum of \$1,800 by way of instalments of \$50 net per calendar month, starting in October 2020 and continuing until such time as the sum is repaid.**

What is the issue?

[1] The Authority issued a determination on 4 September 2020 ordering Michael Saunders to pay Noel Leeming Group Limited (NLG or the company) the sum of \$14,768.54 net in instalments, for an overpayment.¹

¹ *Noel Leeming Group Ltd v Michael Saunders* [2020] NZERA 361.

[2] The parties were encouraged to resolve the question of costs by agreement but resolution has not occurred. Submissions were received from the company but not from Mr Saunders.

What did NGL apply for?

[3] As the successful party, NGL seeks costs of \$2,250 being half the notional daily tariff. It is suggested that if an investigation meeting was required it would have taken half a day. NGL argues that it did nothing to cause Mr Saunders to incur unwarranted legal expenses.

[4] Invoices were lodged which support actual costs being more than the amount NGL seeks.

What are the costs principles in the Authority?

[5] The Authority has the power to award costs.² This power is discretionary but must be used in a principled manner. In *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* the Employment Court outlined principles to guide the Authority's approach to costs which include:

- (a) The statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction;
- (b) Equity and good conscience is to be considered on a case by case basis;
- (c) Costs are not be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award;
- (d) Costs generally follow the event;
- (e) Awards will be modest; and
- (f) Frequently costs are based on a notional daily tariff.³

² Employment Relations Act 2000, Schedule 2, cl 15.

³ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808, confirmed in *Fagotti v Acme & Co Ltd* [2015] NZEmp 135.

What is the costs outcome?

[6] No investigation meeting was required as NGL's claim was determined on the papers. The claim was relatively straightforward. Mr Saunders did not provide any evidence or submissions other than with the statement in reply, despite being given the opportunity to do so. A fair contribution to costs is \$1,800.

[7] NGL recognised that Mr Saunders should be required to repay the overpayment under a fair arrangement and instalments were ordered in the earlier determination. The same approach should be taken to costs.

[8] I order Michael Saunders to pay Noel Leeming Group Limited as a contribution to its costs the sum of \$1,800 by way of instalments of \$50 net per calendar month, starting in October 2020 and continuing until such time as the sum is repaid.

Nicola Craig

Member of the Employment Relations Authority