



# New Zealand Employment Relations Authority Decisions

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## O'Rourke v Air New (Auckland) [2011] NZERA 861; [2011] NZERA Auckland 26 (20 January 2011)

Last Updated: 18 April 2017

### IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2011] NZERA Auckland 26  
5296678

BETWEEN DAVID O'ROURKE Applicant

AND AIR NEW ZEALAND LIMITED

Respondent

Member of Authority: Robin Arthur

Representatives: Lisa Keys and Monica Londahl for Applicant

Kevin Thompson for Respondent

Memoranda: 17 December 2010 from the Respondent and 14 January

2011 from the Applicant

Determination: 20 January 2011

### COSTS DETERMINATION OF THE AUTHORITY

[1] By determination AA490/10 the Authority declined David O'Rourke's personal grievance application and reserved costs. The parties were unable to agree on costs and Air New Zealand Limited (ANZL) lodged a memorandum seeking an order for costs to which Mr O'Rourke, through his union solicitor, replied.

[2] ANZL sought an order for costs in the range of \$9000 to \$10,500 based on an investigation meeting spread over three days – two days of evidence and a half day of oral presentation and argument on written submissions. It submitted a higher than usual level of preparation was required to deal with a large volume of relevant background documents, evidence from ten witnesses and a relatively complex range of issues. It suggested the notional daily rate in the Authority was presently in the range of \$3000 to \$3500 and should be applied as if for a full three days to recognise a high level of complexity and preparation. It further suggested there should be no issue as to the ability of Mr O'Rourke to meet such a costs order as ANZL would

expect his union, FARSA, would pay the award of his behalf.

[3] Mr O'Rourke, in reply, accepted costs follow the event but submitted an order of no greater than \$6500 was reasonable and realistic because the matter was conducted efficiently. His memorandum in reply stated the union did not have "an open chequebook" and he was expected to contribute, to the degree he could, towards "the inevitable order for costs".

[4] Applying the familiar principles outlined in *PBO Ltd v Da Cruz* [2005] 1

ERNZ 808 I consider the tariff-based approach to costs may be applied in the present case.

[5] The notional daily rate I take to be \$3000. I do not accept that the starting level for the daily rate is presently above that figure although the rate may be adjusted upwards, in suitable cases, to take account of factors such as conduct which unnecessarily increased costs.

[6] I do not consider this case requires any increase of the rate for that factor or because the matter was particularly complex, however detailed or convoluted the evidence sometimes was.

[7] However I accept that the tariff should be taken to apply to three days, rather than the bare two-and-a-half days of hearing time, to reflect additional telephone conferences, extended days during the investigation meeting and some additional preparation time for submissions allowed in the morning of the third day.

[8] Accordingly, as costs follow the event, Mr O'Rourke is to pay \$9000 as a modest contribution to the costs incurred by ANZL in responding to his unsuccessful personal grievance application.

Robin Arthur

Member of the Employment Relations Authority

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