

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

[AA 135A/09]

BETWEEN                      JESSICA OLIVER  
   Applicant  
  
AND                                LEAMINGTON  
   HOSPITALITY LTD  
   Respondent

Member of Authority:        Rosemary Monaghan  
  
Representatives:              Melanie Swarbrick, for Applicant  
   Cor Speksnijder, for Respondent  
  
Submissions received:        Friday 30 January 2009 from Applicant  
   from Respondent  
  
Determination:                Monday 22 June 2009

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     In a determination in the above dated 30 April 2009 I ordered the respondent to comply with the terms of a mediated settlement, and the payment of a penalty for the failure to comply. Costs were reserved and the applicant has filed a memorandum on the matter. There has been no response from the respondent.

[2]     Counsel cites costs of \$1,587 (excl GST) plus disbursements of \$35, and seeks a significant contribution. She refers in support to the principles set out in **PBO Limited (formerly Rush Security Limited) v da Cruz** <sup>1</sup>

[3]     Ms Oliver was the successful party and is entitled to a contribution to her costs.

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<sup>1</sup> [2005] 1 ERNZ 808.

[4] With reference to the relevant principles and to the respondent's conduct of the matter I recorded in the substantive determination the difficulties the Authority encountered in obtaining a statement in reply from the respondent, and that Mr Murray attended the investigation meeting unprepared. I accept this added unnecessarily to the applicant's costs.

[5] Regarding the respondent's ability to pay, I accept the material provided to the Authority was incomplete. It was not necessary to pursue that matter to the extent that it related to the applicant's more immediate request for an order for compliance because no request was made under s 138 (4A) of the Employment Relations Act 2000, and an order was made that the respondent comply with the relevant term by making payment in full.

[6] As was also mentioned in the substantive determination, the material provided was indicative of certain financial difficulties. However it was not sufficient to persuade me for costs purposes that no order should be made.

[7] The investigation meeting took half a day, including time spent while the parties had a further discussion about the problem between themselves.

[8] Bearing all of this in mind, the respondent is ordered to pay to the applicant the sum of \$1,000 plus disbursements of \$35.

[9] The respondent is also ordered to reimburse the applicant for the filing fee of \$70.

R A Monaghan

Member of the Employment Relations Authority