IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

BETWEEN		ADRIAN PETERSEN Applicant
A N D		SB AUTO LIMITED Respondent

Member of Authority:	Anna Fitzgibbon
Representatives:	Danny Gelb, Advocate for Applicant Steve Boyle, Director of Respondent
Submissions received:	7 December 2012 from Applicant 18 December 2012 from Respondent
Date of Determination:	17 January 2013

COSTS DETERMINATION OF THE AUTHORITY

A.   SB Auto Limited is ordered to contribute $1,500 towards the legal costs of Mr Adrian Petersen plus $71.56 filing fee.

[1]   In a determination dated 27 November 2012[1] the Authority determined that Mr Petersen's dismissal by SB Auto Limited (SB Auto) was unjustified. The Authority also determined that Mr Petersen contributed to the circumstances giving rise to the unjustified dismissal and accordingly remedies were reduced by 50%.

[2]   Costs were reserved and the parties encouraged to resolve costs by agreement. The parties were unable to reach agreement and filed memoranda on the matter.

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[1]   2012 NZERA Auckland 421

[3]   Mr Gelb sought an order for a contribution to costs in the sum of $3,000 to the total costs of representation of $10,788.16 incurred by Mr Petersen plus the Authority filing fee of $71.56.

[4]   Mr Boyle in response submitted that as Mr Petersen was only partially successful, costs should be reduced. Mr Boyle sought an order that SB Auto pay a contribution to Mr Petersen's costs of $1,500.

[5]   The Authority's power to award costs arises from Schedule 2, clause 15 of the Employment Relations Act 2000. This confers a wide discretion on the Authority to award costs, on a principled basis. The general principle is that costs follow the event.

[6]   The Employment Court in *Carter Holt Harvey v. Eastern Bays Independent Industrial Workers Union & Ors* [2] 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.

[7]   Mr Gelb for Mr Petersen seeks an award of $3,000 which is less than the notional daily rate of $3,500. Mr Gelb has not provided any reasons as to why the Authority should depart from the notional daily rate of $3,500.

[8]   The investigation meeting took one full day in the Authority and it is appropriate that there should be some contribution by SB Auto towards Mr Petersen's costs to reflect his partial success.

[9]   I found Mr Petersen's dismissal for serious misconduct unjustifiable but held that he had contributed to the circumstances giving rise to the grievance. I determined that remedies should be reduced by 50% to take into account Mr Petersen's contribution. My view is that the notional daily rate should be decreased to reflect the fact that Mr Petersen was partially successful due to his contribution.

[10]   I conclude that the notional daily rate should be decreased to $1,500 plus disbursements of $71.56.

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[2]   [2011] NZEmpC 13

[11]   SB Auto is therefore ordered to contribute to Mr Petersen's costs in the sum of $1,500 plus $71.56 filing fee.

Anna Fitzgibbon
Member of the Employment Relations Authority