

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2011] NZERA Auckland 196  
5275405

BETWEEN                      KATE RUSSELL  
Applicant

AND                              TRIODENT LTD  
Respondent

Member of Authority:      James Wilson

Representatives:            Dean Wharekura & Kate Russell in person  
Wendy MacPhail for the respondent

Costs submissions  
received:                      14 March 2011 from the applicant  
21 February 2011 from the respondent

Determination:              12 May 2011

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     In a determination dated 20 January 2011 I found that Ms Russell was justifiably dismissed from her employment at Triodent after a full and fair investigation had determined that she was, on the balance of probabilities, guilty of serious misconduct, and that she did not have a personal grievance against her employer, Triodent Ltd.

[2]     In that determination I urged the parties to attempt to settle the question of costs between themselves. Unfortunately they have not been able to do so and Ms Macphail, on behalf of Triodent, has filed a submission seeking a contribution towards her client's costs

## **The submissions**

[3] Ms Macphail in her submission argues that a reasonable contribution to her clients costs would be \$3000.00. In support of this argument she cites the principles set out in the Employment Court's judgement in *PBO (formally Rush Securities Ltd) v Da Cruz* [2005] 1 ERNZ 808. She also points out that the Authority's investigation meeting took 1 day and she supplies a copy of her Company's costs invoice which indicated that Triodent's legal costs were in excess of \$12,500

[4] In reply Ms Russell simply advised that she was no longer represented by Mr Wharekura and supplied a copy of an invoice which she says were costs incurred in her case against Triodent.

## **Discussion and determination**

[5] Ms Russell was unsuccessful in her claim against Triodent and she was aware that, should she be not be successful she would almost certainly be required to make some contribution to Triodent's legal costs. Triodent's request is entirely consistent with the now well established approach the Authority takes to costs.

[6] **Kate Russell is to pay Triodent Ltd \$3000.00 as contribution towards their costs**

James Wilson

Member of the Employment Relations Authority