

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2016] NZERA Christchurch 220
5607082

BETWEEN KAREN SMITH
 First Applicant

 ANTONI SMITH
 Second Applicant

AND ASPECT GROUP (2015) LIMITED
 Respondent

Member of Authority: Vicki Campbell

Representatives: David Beck for Applicant
 Jeff Goldstein for Respondent

Submissions received: 28 September 2016 from Applicant
 14 September 2016 from Respondent

Determination: 14 December 2016

COSTS DETERMINATION OF THE AUTHORITY

- A. Karen Smith and Antoni Smith are ordered to pay to Aspect Group (2015) a contribution to costs in the amount of \$2,000 within 14 days of the date of this determination.**

[1] In a determination dated 16 August 2016¹, I held that Mr and Mrs Smith were not employees of Aspect Group (2015) Limited (Aspect Group) and therefore the Authority had no jurisdiction to investigate their claims.

[2] I reserved costs, indicating that if the parties were unable to resolve that issue, both parties would have the opportunity to file cost memoranda and evidence. These have now been received by the Authority for consideration.

¹ [2016] NZERA Christchurch 133.

[3] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event.

Determination of costs

[4] Under normal circumstances the Authority would apply a starting point of a notional daily tariff for quantifying costs.

[5] As held by the Employment Court, the assessment of an appropriate contribution to costs in the Authority requires a different approach to assessing costs to that used by the Employment Court.² As noted in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*³ awards in the Authority will be modest taking into account conduct which increases costs unnecessarily.

[6] The hearing took one day and I am satisfied neither party conducted themselves in a way that increased costs unnecessarily. The daily tariff applying to this matter is \$3,500 which is the amount sought by Aspect Group.

[7] In my determination of 16 August 2016, I directed the parties to include a breakdown of how and when costs were incurred and to provide supporting evidence.⁴ The respondent has not provided this information, simply requesting the Authority to award its daily tariff in full. I have therefore been unable to assess the extent of costs incurred by Aspect Group as to their reasonableness or necessity.⁵

[8] Karen and Antoni Smith have submitted that they are impecunious and will struggle to meet any significant award of costs. They rely on the IRD records produced at the investigation meeting to support their submission.

[9] Using the starting point of \$3,500 and taking all the circumstances into account I consider an appropriate contribution to Aspect Groups costs to be \$2,000.

² *Booth v Big Kahuna Holdings Limited* [2015] NZEmpC 4 at [6].

³ (2006) 7 NZELC 98,128; [\[2005\] ERNZ 808](#); (2005) 3 NZELR 1 (EMC).

⁴ Above n 1 at [60].

⁵ Above n 3.

[10] Karen Smith and Antoni Smith are ordered to pay to Aspect Group (2015) a contribution to costs in the amount of \$2,000 within 14 days of the date of this determination.

Vicki Campbell
Member of the Employment Relations Authority