



### ***15 Power to award costs***

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.*
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.*

[5] Costs are at the discretion of the Authority, as observed by Chief Judge Colgan in *NZ Automobile Association Inc v McKay*<sup>1</sup>.

[6] The principles and the approach adopted by the Authority on which an award of costs is made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>2</sup>.

[7] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>3</sup> that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*<sup>4</sup> at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.”

### **Determination**

[8] A tariff based approach is that usually adopted by the Authority, which has the discretion to raise or lower the tariff, depending on the circumstances. For a 1 day investigation meeting this would normally equate to \$3,500.00, and for a half day to \$1,750.00.

[9] The normal rule is that costs follow the event and having considered all of the circumstances, I can see no justification for not making the costs award to Air New Zealand Limited (ANZL) as the successful party in the proceedings.

[10] Adopting the notional daily tariff rate of the Authority as \$3,500.00, I take that as the appropriate starting point for costs.

[11] ANZL is also claiming costs of \$1,514.13 (inclusive of GST of \$197.50) in respect of the attendance of a previous employee witness at the Investigation Meeting, Mr Gilmore. Mr

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<sup>1</sup> [1996] 2 ERNZ 622

<sup>2</sup> [2005] 1 ERNZ 808

<sup>3</sup> [2005] 1 ERNZ 808

<sup>4</sup> [2001] ERNZ 305

Gilmore is currently employed by a third party who paid Mr Gilmore for the day and has subsequently invoiced Air New Zealand Limited in respect of his attendance at the investigation meeting.

[12] Mr Gilmore's attendance at the investigation meeting held to consider the preliminary issue was at the request of the Applicant, and he would not otherwise have been called as a witness by ANZL for the preliminary issue.

[13] Further to a request by the Authority, ANZL has provided details of the invoiced costs in respect of Mr Gilmore's attendance and I am satisfied that they are reasonable pursuant to Schedule 2 (1) of the Act..

[14] I order Mr Talbot contributes the sum of \$3,066.60 towards ANZL's actual costs (calculated as \$1,750.00 in respect of the daily tariff and \$1,316.60 in respect of Mr Gilmore's attendance at the investigation meeting), pursuant to clause 15 of Schedule 2 of the Act.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**