

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**[2017] NZERA Auckland 8  
5640154  
5640161**

BETWEEN

KANE UNDERHILL  
First Applicant

TYRONE UNDERHILL  
Second Applicant

AND

COCA-COLA AMATIL (NZ)  
LTD  
Respondent

Member of Authority: Eleanor Robinson

Submissions received: None from Applicants  
19 December 2016 from Respondent

Determination: 12 January 2017

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] By determination [2016] NZERA Auckland 381 it was determined that the Applicants, Mr Kane Underhill and Mr Tyrone Underhill, did not raise their personal grievances with the Respondent, Coca Cola Amatil Limited (CCANZ) within the statutory 90 day period .

[2] CCANZ has filed submissions in respect of costs.

[3] The matter involved a half day of investigation meeting time.

[4] Ms Smith, on behalf of CCANZ, is seeking a contributory award of \$2,250.00 towards the actual costs of \$10,000.00.

[5] Ms Smith in support of the claim submits that the Applicants were unsuccessful in their claims before the Authority. She submits that it was CCANZ's preference to have had the matter heard on the papers, which would have minimised the cost, however the Applicants opposed this proposal, preferring to have their: "*day in Court*".

[6] Although the matter was heard within a half day of an investigation meeting, it is submitted by CCANZ that this did not impact upon preparation time which was the same as for a full day's hearing.

## *Principles*

[7] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) which states:

### ***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.*

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

[9] 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> as confirmed in *Fagotti v Acme & Co Ltd*.<sup>3</sup>

[10] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>4</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>5</sup> at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.”

[11] It is also a principle that costs are not to be used as a punishment or expression of disapproval of the unsuccessful party’s conduct.

## **Determination**

[12] I have carefully considered the submissions of CCANZ.

[13] CCANZ is not seeking actual costs plus disbursements, but rather an award of costs at the ‘daily tariff’ rate.

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

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

<sup>3</sup> [2015] NZEmpC 135 at [114]

<sup>4</sup> [2005] 1 ERNZ 808

<sup>5</sup> [2001] ERNZ 305

[14] Having examined Ms Smith's memorandum and supporting documentation, I am satisfied that the requirements as to specificity have been complied with, and accept the incurred costs as reasonable.

[15] A tariff based approach is that usually adopted by the Authority, which has the discretion to raise or lower the tariff, depending upon the circumstances. I see no reason for departing from the usual tariff approach in this matter.

[16] Costs normally follow the event and CCANZ is entitled to a contribution towards its costs. I award this at the notional daily tariff rate of \$4,500.00 per day in respect of half a day, rather than at the actual costs incurred level.

[17] The Applicants are jointly ordered to pay CCANZ the sum of \$2,250.00 costs, pursuant to clause 15 of Schedule 2 of the Act.

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