

exceptional circumstances to support allowing the grievance to be raised outside of the statutory time frame.

[6] Mr Gelb submits that Mr Walker had engaged a well-respected and knowledgeable law firm during the process, which, if asked to do so, would have most likely, have advised Mr Walker of the risks of attempting to raise a personal grievance outside of the 90 day statutory time frame.

[7] No submissions were received from Mr Walker.

Principles

[8] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 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.

[9] Costs are at the discretion of the Authority, as observed by the current Chief Judge Colgan in *NZ Automobile Association Inc v McKay*¹.

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

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

[12] It is also a principle that: “*Costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful parties conduct, although conduct which has*

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2005] 1 ERNZ 808

⁴ [2001] ERNZ 305

increased costs unnecessarily” can be taken into consideration and thereby increase the notional daily tariff rate.

Determination

[13] I have considered the submissions of the parties. Assessing the time required to be spent by the Authority as half a day of an Investigation Meeting, I consider that when applying the standard daily tariff in the Authority that equates to \$2,250.00.

[14] Accordingly, Mr Walker is ordered to pay New Zealand Compliance and Repairs Limited a contribution to costs in the sum of \$2,250.00, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

Eleanor Robinson
Member of the Employment Relations Authority