

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**[2017] NZERA Christchurch 6
5629105**

BETWEEN

JILLIAN WATSON
Applicant

AND

ASHBURTON DISTRICT
COUNCIL
Respondent

Member of Authority: Eleanor Robinson

Submissions received: 19 December 2016 from Applicant
1 December 2016 from Respondent

Determination: 10 January 2017

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination [2016] NZERA Christchurch 194 it was determined that the Applicant, Ms Jill Watson, and the Respondent, Ashburton District Council, (the Council) had not been involved in a dispute, but had been engaged in bargaining.

[2] Costs were reserved in that determination and the Council now seeks costs in that matter.

[3] The matter was determined 'on the papers'.

[4] Both parties have filed submissions on costs. Mr Neil McPhail, on behalf of the Council, is seeking a contributory award of \$3,079.17 towards the actual costs of \$4,665.42 (exclusive of GST). In addition, Mr McPhail seeks an additional sum of \$243.75 plus GST in respect of preparation of the costs memorandum.

[5] Mr Jeff Goldstein, on behalf of Ms Watson, submits that costs should lie where they fall on the basis that the matter was a test case with regard to the interpretation of the Council's standard employment agreement.

[6] In the alternative, Mr Goldstein submits that an appropriate sum for the Applicant to contribute given that the issue was determined 'on the papers' would be in the sum of \$500.00.

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*¹.

[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*² as confirmed in *Fagotti v Acme & Co Ltd*.³

Determination

[10] Whilst it is generally the case that costs lie where they fall in a dispute over contractual interpretation, in this case I determined that it was not a dispute *per se*, but that the parties were engaged in a bargaining process.

[11] 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.

[12] Costs normally follow the event and the Council is entitled to a contribution towards its costs. This matter was decided 'on the papers', however there was a level of complexity in the matter.

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2015] NZEmpC 135 at [114]

[13] Accordingly I consider it appropriate to base the level of costs on the normal tariff in the Authority as at the date of filing and to take a half day investigation meeting as the appropriate amount of time required to be spent on this matter.

[14] Accordingly Ms Watson is ordered to pay the Council the sum of \$1,750.00 towards its legal costs.

[15] There is no additional costs award in respect of the costs submissions as the daily tariff rate has been set to encompass all aspects of the investigation process.

Eleanor Robinson
Member of the Employment Relations Authority