

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 273A/10
5280080

BETWEEN HAORA HEWARE
 WILLIAMS
 Applicant

AND NIUE HONEY COMPANY
 NEW ZEALAND LIMITED
 Respondent

Member of Authority: K J Anderson

Representatives: S Scott, Counsel for Applicant
 M Rush, Counsel for Respondent

Submissions received: 9 July 2010 from Applicant
 23 July 2010 from Respondent

Determination: 10 September 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 11th June 2010 (AA 273/10), the Authority found in favour of Mr Williams in that he had been constructively dismissed. The parties were invited to resolve the matter of costs but have been unable to do so. As the successful party, Mr Williams has filed submissions on costs. Submissions for Niue Honey Company New Zealand Limited (“the Company”) have been filed in response.

[2] Mr Williams submits that the Authority should award the total costs incurred; being \$3,516.00 (plus GST), for: “... *all work undertaken subsequent to receiving instructions in October 2009.*” Presumably, the costs include attending mediation. The general practice of the Authority is that an order for such costs is not appropriate.¹ Nonetheless, I accept that the costs incurred by Mr Williams (and the Company) are most reasonable.

¹ *Trotter v Telecom Corporation of New Zealand Ltd* [1993] 2 ERNZ 935 at 937.

[3] The Company has incurred similar costs and invites the Authority to exercise its discretionary power under clause 15 of Schedule 2 to the Employment Relations Act (“the Act”), and its equity and good faith jurisdiction, and order that costs should lie where they fall. In support of this proposition, the Company says that it has been cooperative and has acted in good faith at all times, including an attempt to arrive at a settlement with Mr Williams, prior to the termination of his employment. I accept that the directors of Company largely attempted at all times to act fairly and reasonably towards Mr Williams. Unfortunately, their knowledge of certain employment law principles was somewhat lacking.

[4] This was not a complex matter and counsel for both parties prepared on an economical and effective basis, consistent with how the Authority is prescribed to act under s 157(1) of the Act.

[6] The accepted practice of the Authority is to apply the principles set out in *PBO Limited (formerly Rush Security Limited v Da Cruz* [2005] ERNZ 808. In particular, a tariff based approach is applied with the current rate of \$3,000 for each day of an investigation meeting commonly being awarded. But the tariff can be raised or reduced depending on the particular circumstances of a case. In this case, given that it was not complex and took approximately half of a day, I conclude a reasonable award of costs is \$1,500.

Determination

[9] Taking all of the circumstances into account, Niue Honey Company New Zealand Limited is ordered to pay to Mr Williams legal costs of \$1,500.00.

K J Anderson
Member of the Employment Relations Authority