

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 80
5519338

BETWEEN	ASCOT ALUMINIUM LIMITED Applicant
AND	JINSI LEE First Respondent
AND	JOE MANOA GRIMA Second Respondent
AND	TASI FELETI-FAANAMA Third Respondent
AND	MOCHAMAD GHALIB Fourth Respondent
AND	SINGARASA NIMALAN Fifth Respondent
AND	SOUTHERN CROSS INSTALLATION LIMITED Sixth Respondent
AND	ROYALE ALUMINIUM LIMITED Seventh Respondent

Member of Authority: Vicki Campbell

Representatives: Eska Hartdegen for Applicant
No Appearance for First Respondent
Christopher Eggleston for Second, Third, Fourth and
Seventh Respondents
No appearance for Fifth Respondent
No appearance for Sixth Respondent

Submissions received: 5 February 2015 from Second, Third, Fourth and
Seventh Respondents
26 February 2015 from Applicant

Determination: 20 March 2015

- A. Ascot Aluminium Limited is ordered to pay a contribution to the second, third, fourth and seventh respondent's costs of \$2,250.00 within 14 days of the date of this determination.**

Employment relationship problem (optional wording and heading)

[1] The applicant was unsuccessful with its claims for interim relief and the parties were invited to resolve the issue of costs between them. Agreement has not been reached and the Authority is now in receipt of memorandum from both parties.

[2] The principles applying to costs in the Authority are well established. The primary principle is that costs follow the event. The discretion to award costs, while broad, is to be exercised in a principled way.

[3] The second, third, and fourth respondents seek a contribution to their costs of \$1,750 each being a total of \$5,250.00 with an additional claim from the seventh respondent for a contribution to its costs of \$875.00. The applicant submits that \$1,750 is adequate contribution to the second, third and fourth respondent's costs and that \$250.00 will be an adequate contribution to the seventh respondent's costs.

[4] The second, third, fourth and seventh respondents have incurred actual costs of \$12,000.00. The matter was brought on with urgency and the parties attended an investigation meeting which lasted for ½ a day. The investigation meeting dealt only with the preliminary issue of interim relief.

[5] Following my determination dated 22 December 2014¹ the applicant lodged and served an amended statement of problem withdrawing its claims against the seventh respondent.

[6] The seventh respondent submits that the applicant ought to have known from the outset that its claims against it were without foundation and it has accordingly been put to unnecessary expense. The seventh respondent submits that in determining the level of costs to be awarded to the seventh respondent, the Authority should take

¹ [2014] NZERA Auckland 531.

into account the issuing of baseless claims and seeks an award of \$875.00 as a contribution to the seventh respondent's costs.

Determination of costs

[7] Under normal circumstances the Authority would apply a starting point of a notional daily tariff for quantifying costs which is \$3,500 for each day of the investigation meeting. In this case the investigation into the interim application took ½ a day. The tariff for half a day being \$1,750.00.

[8] As held recently by the Employment Court, the assessment of an appropriate contribution to costs in the Authority requires a different approach to assessing costs to that used by the Employment Court.² As noted in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*,³ awards in the Authority will be modest taking into account conduct which increases costs unnecessarily.

[9] In essence the second, third, fourth and seventh respondents are seeking to uplift the daily tariff. Each of the second, third, fourth and seventh respondents contributed to the overall costs of this matter, but there is no evidence to indicate what proportion of the costs were paid by each. Given that, I am not satisfied that the Authority should approach the question of costs on an individual basis.

[10] I am satisfied that the claims against the seventh respondent did not have any legal basis and will allow an uplift of \$500.00 to take that into account.

[11] Ascot Aluminium Limited is ordered to pay to the second, third, fourth and seventh respondents the total sum of \$2,250 as a contribution to the costs incurred within 14 days of the date of this determination.

Process moving forward

[12] The second, third and fourth respondents seek a direction from the Authority that the substantive matters be delayed until the award of costs is satisfied in full. I agree with the submissions of the applicant that the Authority has no jurisdiction to make such a direction.

² *Booth v Big Kahuna Holdings Limited* [2015] NZEmpC 4 at [6].

³ (2006) 7 NZELC 98,128; [\[2005\] ERNZ 808](#); (2005) 3 NZELR 1 (EMC).

[13] The parties will be contacted in the next 2-3 weeks to arrange a case management call to discuss timetabling for the investigation meeting to deal with the substantive matters.

Vicki Campbell
Member of the Employment Relations Authority