



# New Zealand Employment Relations Authority Decisions

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## Burns-Francis v Media Works TV Limited (Auckland) [2017] NZERA 219; [2017] NZERA Auckland 219 (27 July 2017)

Last Updated: 4 August 2017

### IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2017] NZERA Auckland 219  
5590674

BETWEEN ANNA BURNS – FRANCIS Applicant

A N D MEDIA WORKS TV LIMITED and MEDIAWORKS HOLDINGS LIMITED

Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Philip Ahern, Counsel for Applicant

Gillian Service, Counsel for Respondent

Date of Determination: 27 July 2017

### COSTS DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

**A. The applicant, Anna Burns - Francis is ordered to contribute \$1,000 towards the costs of the respondents, Media Works TV Limited and Mediaworks Holdings Limited ( Mediaworks) within 21 days of the date of this determination.**

#### The investigation meeting

[1] An investigation meeting was scheduled for 3 days in the Authority to investigate Ms Burns-Francis' employment relationship problem. Shortly after the lunch break on the first day of the Authority's investigation meeting, Ms Burns-Francis decided to withdraw her employment relationship problem.

#### Costs Determination

[2] On 11 July 2017, Ms Service filed a memorandum seeking costs on behalf of Mediaworks in the sum of \$2000, being the equivalent of costs calculated according to the Authority's daily tariff, of a half day investigation meeting, rounded down.

[3] Mr Ahern for Ms Burns – Francis, filed a memorandum as to costs in reply on

18 July 2017. Mr Ahern submits that this is a case in which costs should lie where they fall.

#### The Authority's daily costs tariff

[4] For matters filed in the Authority from 1 August 2016, the Authority's normal daily tariff increased from \$3,500 to \$4,500 for the first day of an investigation meeting. For each subsequent day of an investigation meeting the Authority's normal daily tariff remains at \$3,500. The matter was filed in the Authority on 09 September

2016 and therefore the new costs regime applies.

#### The Authority's power to award costs

[5] The Authority's power to award costs arises from Schedule 2, clause 15 of the Act. This confers a wide discretion on the Authority to award costs on a principled basis.

[6] The full Employment Court decision in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*<sup>2</sup> sets out the principles that apply to awards of costs in the Authority. Counsel are both experienced and are aware of the applicable principles.

[7] The general principle is that costs follow the event. In this case because of the decision by Ms Burns – Francis to withdraw, the Authority was not required to make a determination. There was no successful party.

[8] However, as Ms Service submits, Mediaworks prepared, and was put to the cost of preparing for a 3 day investigation meeting. Ms Service cites *Advance*

<sup>1</sup> Practice Note 2, Costs in the Employment Relations Authority

<sup>2</sup> [2017] NZERA Wellington 22 at [24]

*International Cleaning Systems (NZ) Limited v Brown* in support of the proposition that a withdrawing party is not immune from costs.

[9] I agree that Mediaworks has incurred costs and is entitled to a contribution to those costs. The investigation meeting took approximately half a day in the Authority, or 4 hours. Based on the Authority's daily tariff, this would amount to the sum of \$2,250. Ms Service seeks slightly less than the daily tariff for the half day. She seeks \$2000.

[10] The actual investigation meeting did not take a half day. I consider a contribution of \$1000 to be appropriate in all the circumstances.

[11] Accordingly, I order costs of \$1,000 to be paid by Ms Burns – Francis to Mediaworks within 21 days of the date of this determination.

**Anna Fitzgibbon**

**Member of the Employment Relations Authority**