

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2013] NZERA Auckland 359
5372563**

BETWEEN ANNE CARNEY
Applicant

AND MAKANA NORTHLAND
LIMITED
Respondent

Member of Authority: Eleanor Robinson

Representatives: Liz Lambert, Advocate for Applicant
Matthew McGoldrick, Counsel for Respondent

Submissions received: None from Applicant
28 May 2013 from Respondent

Determination: 12 August 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination [2013] NZERA Auckland 151 the Authority found that the Applicant, Ms Anne Carney, had not raised a personal grievance in relation to an unjustifiable disadvantage claim within the 90 day statutory time period, nor had the Respondent, Makana Northland Limited (Makana), agreed to the claim being raised outside the 90 day statutory time period.

[2] Ms Carney had been found to be successful in her claim to payment of notice.

[3] In the determination costs were reserved in the hope that the parties would be able to settle this issue between them. Unfortunately they have been unable to do so, and the parties have filed submissions in respect of costs.

[4] This matter involved one day of an investigation meeting with written submissions being filed by Mr McGoldrick subsequent to that. Mr McGoldrick, on behalf of Makana, is seeking a contributory award of \$2,500.00 towards the actual costs.

[5] In support of the level of claim, Mr McGoldrick submits that although the Authority identified that there were five issues to consider, two did not require the Authority to reach a

determination because Ms Carney's claims were statutorily time-barred. This resulted in the Authority having to determine three issues, in which the Authority reached a determination in favour of Makana on two of these issues.

[6] Mr McGoldrick further submits that Makana was put to the cost of defending the two claims which the Authority had found were statutorily time-barred, and notes that of the 69 paragraphs of the determination, only 6 addressed Ms Carney's successful claim for payment of notice.

Principles

[7] 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.

[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.

[10] 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."

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2005] 1 ERNZ 808

⁴ [2001] ERNZ 305

Determination

[11] The notional daily tariff rate applied in the Authority is \$3,500.00 per day. I had indicated in the determination on the substantive matter that, given the extent to which both parties had been successful, costs should be moderate.

[12] I have considered the submissions made by Makana, and I believe that a contribution towards costs of \$2,500.00 is a reasonable contribution. Accordingly Ms Carney is ordered to pay Manaka the sum of \$2,500.00 pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

Eleanor Robinson
Member of the Employment Relations Authority