

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2012] NZERA Auckland 84
5347302**

BETWEEN

GRAHAM CORNES
Applicant

AND

NEWMONT WAIHI GOLD
LIMITED
Respondent

Member of Authority: Eleanor Robinson

Representatives: Applicant in person
John Rooney, Counsel for Respondent

Submissions received: No submissions from Applicant
31 January 2012 from Respondent

Determination: 2 March 2012

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

1. In a determination dated 19 December 2011 ([2011] NZERA Auckland 539), the Authority found that the Applicant, Mr Graham Cornes, had not been unjustifiably dismissed or unjustifiably disadvantaged by the Respondent, Newmont Waihi Gold Limited (“Newmont”).
2. In that determination costs were reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately they have been unable to do so, and Newmont has filed submissions in respect of costs.
3. This matter involved an interim Investigation Meeting of half a day, and 2 days for the Investigation Meeting on the substantive matter, with written submissions being submitted subsequent to that meeting.
4. Newmont is seeking a contributory costs award of \$9,000.00 plus GST, and disbursements of \$661.74 in respect of travel and accommodation costs, towards its actual costs of \$41,000.00.

5. Mr Rooney, in support of the level of the claim by Newmont, submitted as significant factors for the consideration of the Authority that:
- Mr Cornes had sought reinstatement to his original position with Newmont at the interim meeting on 5 July 2011, but on 11 July 2011 had subsequently informed the Authority that he had found alternative employment and was therefore seeking reinstatement to the payroll;
 - The application by Mr Cornes to amend his claim to reinstatement to the payroll necessitated Newmont submitting supplementary submissions; and
 - As a result of the Applicant's initial supplementary submissions addressing all matters rather than those relevant to Mr Cornes's new employment, Newmont had to apply to the Authority for a direction that the Applicant file amended submissions.
6. The principles applicable to awards of costs in the Authority are well established. It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*¹ that costs are modest. A tariff based approach is that usually adopted by the Authority, which has the discretion to raise or lower the tariff, depending on the circumstances. For 2 and a half days of Investigation Meeting, this would normally equate to an award of \$7,500.00.
7. I accept that the amendment of his claim from reinstatement to his original position to reinstatement to the payroll necessitated supplementary submissions by Newmont. I consider it appropriate to take this aspect into consideration and award an additional \$250.00. I order Mr Cornes to contribute \$7,750.00 towards the Newmont's actual costs.
8. Newmont has also claimed reimbursement of \$661.74 in respect of disbursements relating to travel and accommodation costs. Disbursements are normally recoverable where supported by invoices. I am satisfied that \$661.74 is an appropriate amount for the Applicant to contribute.

¹ [2005] 1 ERNZ 808

9. Mr Cornes is ordered by pay Newmont \$7,750.00 plus GST towards its legal costs and \$661.74 as disbursements.

Eleanor Robinson
Member of the Employment Relations Authority