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Cunneen v Shore Foods Limited (Auckland) [2007] NZERA 36 (4 April 2007)

Determination Number: AA 34A/07 File Number: 5038422

Under the [Employment Relations Act 2000](#)

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY OFFICE

BETWEEN Matthew Cunneen

AND Shore Foods Limited

REPRESENTATIVES John Peebles, advocate for Matthew Cunneen

Michael Sumpter, counsel for Shore Foods Limited

MEMBER OF AUTHORITY RAMonaghan

MEMORANDA RECEIVED 13 March 2007

DATE OF DETERMINATION 4 April 2007

DETERMINATION OF THE AUTHORITY ON COSTS

[1] In a determination of the above, dated 14 February 2007, I found Mr Cunneen's resignation did not amount to a constructive dismissal. Costs were reserved.

[2] Counsel for Shore Foods Limited has filed a memorandum seeking costs in the sum of \$4,522.50. I cannot identify from the memorandum whether the legal costs identified are full solicitor and client costs, or whether the cited figure reflects a contribution to full costs. Whatever the answer, the amount is modest and reasonable.

[3] I was not told how a claim for \$450 for 'additional costs' incurred by the company and its directors, including travel costs, was calculated. However because of the approach I take to the setting of costs, it is not necessary to take that matter any further.

[4] The criteria the Authority uses in assessing costs are set out in a decision of the Employment Court in **PBO Limited (formerly Rush Security Limited) v da Cruz**.¹ With reference to those criteria, I find that as the successful party in this matter Shore Foods Limited is entitled to a contribution to its costs.

[5] In general the Authority's awards of costs are modest, although the court in **da Cruz** warned against the rigid application of a tariff-based approach and emphasised that each case must be considered in the light of its own circumstances.

[6] Here the investigation meeting took half a day, and the legal issues were not complex. There was some disagreement about the facts, but as the meeting progressed it became apparent that there was more common ground than might have been expected. Overall the factual matrix was relatively uncomplicated too.

¹ [\[2005\] NZEmpC 144](#); [\[2005\] 1 ERNZ 808](#)

This is a case in which I see no need to depart from the range of costs that a half-day meeting would usually attract.

[7] Mr Cunneen is therefore ordered to contribute to the costs incurred by Shore Foods Limited in the sum of \$1,000.

Rosemary Monaghan

Member of Employment Relations Authority

