

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 211
5395211

BETWEEN LUKE CURTIS
Applicant
AND R S CONSTRUCTION LIMITED
Respondent

Member of Authority: Rachel Larmer
Representatives: Stan Austin, Advocate for Applicant
Wendy McPhail, Advocate for Respondent
Submissions Received: 06 May 2012 from Applicant
20 May 2013 from Respondent
Date of Determination: 23 May 2013

COSTS DETERMINATION OF THE AUTHORITY

A. R S Construction Limited is ordered to pay Mr Luke Curtis:

- (a) \$1,875 costs; and**
- (b) \$71.56 for his filing fee.**

Employment relationship problem

[1] In a substantive determination dated 23 April 2013¹ the Authority held that R S Construction Limited had unjustifiably dismissed Mr Curtis. The parties were encouraged to resolve costs by agreement but failing that a timetable was set for costs to be dealt with by an exchange of memoranda.

[2] Agreement was not reached so Mr Curtis now seeks a costs order from the Authority.

Parties' submissions

[3] Mr Curtis says he has incurred costs of \$7,868.30 plus his filing fee of \$71.56. He seeks a costs order for \$5,193.08 plus the filing \$71.56. He says he should be entitled to 66% of his actual costs plus disbursements.

¹ [2013] NZERA Auckland 139.

[4] R S Construction says it is a “*small company lacking substantive resources to pay a large award of costs*” so costs should be modest. No evidence was filed as to the company’s means or ability to pay an award of costs.

Costs principles

[5] The Authority’s power to award costs arises from Schedule 2, clause 15 of the Employment Relations Act 2000 (the Act). This confers a wide discretion on the Authority to award costs on a principled basis.

[6] The principles guiding the Authority’s approach to costs are set out by the Full Court of the Employment Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*². Those principles are so well recognised that I do not need to restate them.

[7] The general principle is that costs follow the event, and there is no reason to depart from that in this case. Accordingly, Mr Curtis as the successful party is entitled to a contribution towards his actual costs.

Outcome

[8] I am satisfied that Mr Curtis incurred the costs identified in the invoice he submitted from his representative plus a filing fee of \$71.56.

[9] I adopt the Authority’s usual daily tariff based approach to costs. This matter involved a half day investigation meeting so the notional starting point for assessing costs is \$1,875 being half of the current notional daily tariff of \$3,750.

[10] I am not aware of any factors which should result in an adjustment either up or down to the notional half day tariff. R S Construction is ordered to pay Mr Curtis \$1,875 towards his actual costs and to reimburse him \$71.56 for his filing fee.

Rachel Larmer
Member of the Employment Relations Authority

² [2005] 1 ERNZ 808.