

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2012] NZERA Auckland 226  
5352017

BETWEEN DONNA DANKS  
Applicant

AND HAILES & ASSOCIATES  
LIMITED  
Respondent

Member of Authority: R A Monaghan

Representatives: E Hartdegen, counsel for applicant  
R Upton, counsel for respondent

Memoranda received: 6 June 2012 from applicant  
19 June 2012 from respondent

Determination: 4 July 2012

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 9 May 2012 I found Mrs Danks was not dismissed, and made orders for the payment of underpaid wages. Both parties had sought penalties, and both were unsuccessful.

[2] Costs were reserved, and the parties have filed memoranda on the matter.

[3] Counsel for Mrs Danks referred to the principles in *PBO Limited v da Cruz*<sup>1</sup> but went on to say that the case was one in which a higher than usual award of costs in the Authority was warranted. She pointed to the successful claim for the payment of wages, and said such action would not have been necessary if a written employment agreement had been provided. She also said the employer's counterclaim increased costs unnecessarily. Accordingly she suggested that a contribution to total costs of \$11,500 plus GST, calculated at 70% of that amount, was appropriate. The sum claimed was \$8,050.

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<sup>1</sup> [2005] 1 ERNZ 808.

[4] Counsel for Hailes & Associates Limited (HAL) submitted that the principles in *da Cruz* should apply. He acknowledged that some of Mrs Danks' claims were successful, but said not only was HAL successful in the majority of the claims but it was successful in the most work-intensive claim concerning the termination of Mrs Danks' employment. This should be recognised in costs. He said that an appropriate starting point would be \$3,500 in respect of the first full day in the Authority, plus \$1,750 in respect of the half-day resumption when submissions were heard. A suitable adjustment reflecting Mrs Danks' success would be a maximum of \$1,000.

[5] I agree with all of the points made on behalf of HAL.

[6] Mrs Danks is therefore ordered to contribute to HAL's costs in the sum of \$4,250.

R A Monaghan

Member of the Employment Relations Authority