



New Zealand Employment Relations Authority Decisions

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Deerness v Metlifecare The Poynton Limited [2011] NZERA 222; [2011] NZERA Auckland 168 (27 April 2011)

Last Updated: 20 June 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2011] NZERA Auckland 168 5324218

BETWEEN

AND

PAUL DEERNESS Applicant

METLIFECARE THE POYNTON LIMITED Respondent

Member of Authority: Representatives:

Memoranda received:

R A Monaghan

J Moore, counsel for applicant

A Peskett, counsel for respondent

7 April 2011 from respondent

26 April 2011 from applicant

Determination:

27 April 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 10 March 2011 I found Mr Deerness' dismissal was justified. Costs were reserved.

[2] Both parties have filed memoranda on the matter. The memorandum on behalf of the applicant was received outside the timetable set in the determination, but I accept that the applicant forwarded it well within that timetable and for unknown reasons the Authority did not receive it. Accordingly I have taken the contents into account.

[3] The respondent sought a contribution to costs in the sum of \$2,250 plus GST, based on a meeting time of more than half but less than a full day. In support it cited the principles in *PBO Limited (formerly Rush Security Limited) v da Cruz*.^[1] It also attached copies of offers made without prejudice save as to costs, which I understood was for the purpose of showing that Mr Deerness was placed on notice that costs would be sought against him if he was unsuccessful. Otherwise, and aside from GST, the contribution sought corresponds with a notional daily tariff of \$3,000.

[4] The applicant also cited the principles in *da Cruz*, but submitted that the contribution sought was excessive. The memorandum in support advised that Mr Deerness continues to seek full time employment, and suggested that a contribution of \$1,687.50 plus GST was suitable. There was no explanation of how this figure was identified other than a further suggestion that it adequately represents a time commitment and the complexity of the matter

[5] The respondent's position is reasonable, except that I make no separate provision for GST. Mr Deerness is therefore

ordered to contribute to the respondent's costs in the sum of \$2,250 (inclusive of GST if any).

R A Monaghan

Member of the Employment Relations Authority

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

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