

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**AA 187A/10
5294885

BETWEEN	PAUL EVANS-MCLEOD Applicant
AND	TELECOM NEW ZEALAND LIMITED First Respondent
AND	BRIDGETTE DALZELL Second Respondent
AND	MICHELLE YOUNG Third Respondent
AND	SHAUN HOULT Fourth Respondent

Member of Authority:	Vicki Campbell
Representatives:	Applicant in Person John Rooney for Respondent
Submissions Received:	24 May from Applicant 20 May from Respondent
Determination:	1 June 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 26 April 2010 the Authority determined two preliminary matters. The first matter was the correct identity of the Respondent. I held that Telecom was Mr Evans-McLeod's employer and not the Second, Third and Fourth Respondents.

[2] The second matter was determined in Telecom's favour when I held that the Authority had no jurisdiction to investigate Mr Evans-McLeod's personal grievance in light of the Record of Settlement entered into by the parties.

[3] In my determination I reserved the question of costs and encouraged to parties to settle this matter between them. They have been unable to do so and I am now in receipt of memorandum from both parties.

[4] Telecom submits that while the investigation lasted under half a day the claims by Mr Evans-McLeod were bound to fail. Also, that Mr Evans-McLeod's approach to disclosure resulted in Telecom incurring far more costs than it should have in preparing for the Investigation Meeting. Telecom submits that the conduct of the applicant in conducting his case warrants an award of costs above the notional daily rate and seeks a contribution of \$3,000 plus disbursements of \$401.48.

[5] In his submissions Mr Evans-Leod notes that he has been without employment for nine months and is currently in receipt of a WINZ benefit. Mr Evans-McLeod also asks the Authority to take into account his health issues which is causing concern for himself and his family.

[6] I accept the submissions from Telecom that Mr Evans- McLeod's approach to this case caused it to incur significantly more costs than would ordinarily have been required. However as set out in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*¹ costs are not to be used as a punishment or as an expression of disapproval of an unsuccessful party's conduct.

[7] Having regard to the matter before the Authority and in the principled exercise of my discretion **I order Mr Evans-McLeod to pay to Telecom New Zealand Limited the amount of \$1,500.00 as costs plus disbursements of \$401.48.**

Vicki Campbell
Member of Employment Relations Authority

¹ [2005] 1 ERNZ 808.