

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 419
5370166

BETWEEN CARL FINDLAY
 Applicant

A N D PORTS OF AUCKLAND
 LIMITED
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Simon Mitchell, Counsel for Applicant
 Richard McIlraith and Kylie Dunn, Counsel for
 Respondent

Submissions Received: 30 October 2012 from Respondent
 21 November 2012 from Applicant

Date of Determination: 27 November 2012

COSTS DETERMINATION OF THE AUTHORITY

**A. Mr Carl Findlay is ordered to contribute \$3200 towards Ports of
 Auckland Limited's legal costs.**

[1] In a substantive determination dated 12 October 2012¹ the Authority dismissed Mr Findlay's employment relationship problem. 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.

[3] 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.

¹ [2012] NZERA Auckland 361

[4] The principles guiding the Authority's approach to costs are set out by the Full Employment Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808. Those principles are so well recognised I do not need to restate them.

[5] The general principle is that costs follow the event, and I see no reason to depart from that in this case. Accordingly, the respondent as the successful party is entitled to a contribution towards its legal costs.

[6] The Employment Court in *Carter Holt Harvey v. Eastern Bays Independent Industrial Workers Union & Ors*² observed that a notional daily tariff approach, which was to be adjusted in a principled way, was best suited to the Authority's unique jurisdiction. I adopt that approach.

[7] The respondent says it incurred costs significantly in excess of \$3,500 but seeks an order that the applicant pay \$3,500 costs being the notional daily tariff for a one day investigation meeting. In support the respondent refers to a recent Authority decision *Fifita (aka Bloomfield) v. Dunedin Casinos Limited*³ in which the Member states the normal starting point for costs in the Authority is \$3,500 per day.

[8] The applicant says \$2,000 is the appropriate starting point for a daily rate in the Authority. I do not accept \$2,000 to be the starting point for a notional daily tariff in the Authority, it is \$3,500 as stated in *Fifita* and many other of the Authority's recent costs decisions.

[9] I have adopted a notional daily tariff of \$3,500 as my starting point and now consider whether there are any factors which would warrant adjusting that notional tariff.

[10] Mr Mitchell for the applicant submits no more than \$1000 should be awarded but that in the circumstances of the case no costs award should be made. Mr Mitchell cites in support of his submission my finding in the substantive decision that the applicant's conduct did not constitute serious misconduct. On this basis Mr Mitchell submits, the proceedings were appropriately brought by the applicant. This matter involved an investigation meeting of almost one full day.

² [2011] NZEmpC

³ [2012] NZEA Christchurch 2019

I am prepared to take these factors in to account in assessing costs. I conclude the notional daily tariff should be reduced by \$300. An appropriate award of costs in this matter is \$3,200.

Anna Fitzgibbon
Member of the Employment Relations Authority