

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKAURAU ROHE**

[2024] NZERA 568  
3264699

BETWEEN                      DOUGLAS FURSDON  
   Applicant  
  
AND                                PAMELA PAUL  
   Respondent

Member of Authority:        Eleanor Robinson  
  
Representatives:             Applicant in Person  
   Michele Fyfe for the Respondent  
  
Costs Submissions:         18 September 2024 from the Applicant  
   4 September 2024 from the Respondent  
  
Determination:                24 September 2024

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     In a determination dated 4 September 2024 ([2024] NZERA 529) it was determined that the Applicant, Mr Douglas Fursdon, was not an employee whilst carrying out work for the Respondent, Pamela Paul.

[2]     In that determination costs were reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately they have been unable to do so, and Ms Fyfe is seeking a contribution to costs.

[3]     The investigation meeting took less than half a day.

[4]     Ms Fyfe who represented Ms Paul is her daughter and therefore lacks standing to recover a contribution to her own costs in representing Ms Paul at the investigation. However she did incur professional assistance in preparing the case. In these circumstances a small contribution to costs may be considered.

## *Principles*

[5] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 which states:

### **15 Power to award costs**

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[6] Costs are at the discretion of the Authority, as observed by Chief Judge Colgan in *NZ Automobile Association Inc v McKay*<sup>1</sup>. The principles and the approach adopted by the Authority on which an award of costs are made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>2</sup>.

[7] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>3</sup> that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*<sup>4</sup> at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.

### **Costs Award**

[8] Ms Fyfe has claimed costs in respect of a financial investigation carried out by G S Hampton Accountant. These costs are set out in an invoice at \$3,780.20. I note that the amount claimed included the services of a Research Assistant in the amount of \$1,938.00.

[9] Prior to the Authority’s Investigation, there were also proceedings in the District Court involving similar claims by Mr Fursdon as to monies owed to him by Ms Paul and therefore it is not unreasonable to consider that the financial investigation would also have been undertaken to assist in those proceedings.

[10] In all the circumstances, I consider it appropriate to set the sum for professional services incurred at \$400.00.

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<sup>1</sup> [1996] 2 ERNZ 622

<sup>2</sup> [2005] 1 ERNZ 808

<sup>3</sup> [2005] 1 ERNZ 808

<sup>4</sup> [2001] ERNZ 305

**[11] Accordingly Mr Fursdon is ordered to pay Ms Fyfe the sum of \$400.00 towards her legal costs, pursuant to clause 15 of Schedule 2 of the Act.**

Eleanor Robinson  
Member of the Employment Relations Authority