

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**[2015] NZERA Auckland 139  
5498404**

BETWEEN ANTHONY GANLEY  
Applicant

AND PB SEA-TOW (NZ) LIMITED  
Respondent

Member of Authority: Eleanor Robinson

Costs Submissions 20 April 2015 from Applicant  
8 May 2015 from Respondent

Determination: 13 May 2015

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 16 March 2015 ([2015] NZERA Auckland 76), the Authority found that the Applicant, Mr Anthony Ganley, had been paid his full entitlement to a redundancy payment by the Respondent, PB Sea-Tow (NZ) Limited (PB Sea-Tow) and that he did not have a personal grievance in relation to the redundancy payment or process.

[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 the parties have filed submissions in respect of costs.

[3] The matter involved a one day investigation meeting. The Respondent is seeking a contribution to costs of \$3,500.00, a sum set at the normal daily tariff rate in the Authority for one day of hearing time, plus disbursements of \$56.01 (inclusive of GST) .

[4] The Applicant submits that costs should lie where they fall on the basis that the claim by the Applicant was essentially in the nature of a dispute about the interpretation and application of a collective agreement.

*Principles*

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

*s. 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>.

[7] The principles and the approach adopted by the Authority on which an award of costs is made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>2</sup>.

[8] 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.”

**Determination**

[9] The normal rule is that costs follow the event and the Respondent is entitled to a contribution to its costs.

[10] I accept that the first issue for determination, which was whether or not Mr Ganley had received his full entitlement to redundancy compensation, involved an analysis of the wording and meaning of the collective agreement applicable to Mr Ganley and his employment with PB Sea-Tow, and it was therefore in the nature of a dispute.

[11] However the second issue for determination involved a personal grievance claim of unjustifiable disadvantage arising from the manner in which the redundancy process regarding Mr Ganley was carried out by PB Sea-Tow, and I consider it appropriate that costs are awarded in respect of this second issue..

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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

[12] A tariff based approach is that usually adopted by the Authority, which has the discretion to raise or lower the tariff, depending on the circumstances. For a one day investigation meeting this would normally equate to \$3,500.00, and I use this as a starting point.

[13] PB Sea-Tow has also claimed reimbursement of \$56.01 (including GST) in respect of disbursements. Disbursements are normally recoverable and those requested are supported by invoices. I am satisfied that \$56.01 is an appropriate amount for Mr Ganley to contribute.

[14] Mr Ganley is to pay PB Sea-Tow the sum of \$1,750.00 as a contribution to costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

[15] Mr Ganley is also ordered to pay PB Sea-Tow the sum of \$56.01 including GST, as disbursements

**Eleanor Robinson**  
**Member of the Employment Relations Authority**