

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 420
5369552

BETWEEN	REGINALD HIHA Applicant
A N D	CRANE DISTRIBUTION NZ LIMITED Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Warwick Reid and Rachel Rolston, Advocates for Applicant
Scott Wilson, Counsel for Respondent

Submissions Received: 5 November 2012 from Respondent
No submissions from Applicant

Date of Determination: 27 November 2012

COSTS DETERMINATION OF THE AUTHORITY

A. Mr Reginald Hiha is ordered to contribute \$3,000 towards Crane distributions NZ Limited's legal costs.

[1] In a substantive determination dated 9 October 2012¹ the Authority dismissed Mr Hiha's unjustified dismissal grievance. 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] The respondent sought a contribution of \$3,000 towards its costs from the applicant. The applicant has agreed to the quantum of costs sought but says he is unable to make payment in one lump sum.

¹ [2012] NZERA Auckland 531

[3] The Authority sought disclosure of the applicant's financial situation so that it could assess appropriate costs. The applicant did not provide the necessary financial information and so the Authority must assess an appropriate award of costs in the circumstances.

[4] The Authority's power to award costs arises from Schedule 2, Clause 15 of the Employment Relations Act 2000. This confers a wide discretion on the Authority to award costs, on a principled basis. The general principle is that costs follow the event. The applicant has accepted this principle as he has offered to pay costs as sought by the respondent.

[5] 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. The respondent seeks an award of costs at the notional daily rate of \$3,500.

[6] The matter involved an investigation meeting which took just over half a day. 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.

[7] The applicant failed to provide any information about his financial situation so the Authority cannot take that into account. The applicant provided no further information to assist the Authority in assessing costs. Given that the investigation meeting took just over half a day, I am going to reduce the notional daily tariff accordingly. I consider it appropriate for the applicant to contribute \$3000 to the respondent's costs.

[8] The applicant is ordered to pay the respondent \$3,000 towards the respondent's legal costs.

Anna Fitzgibbon
Member of the Employment Relations Authority

² [2011] NZEmpC 13