

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 52  
5434901

BETWEEN ALAN JOHNSON  
Applicant

AND KEVIN MCDONALD &  
ASSOCIATES  
Respondent

Member of Authority: Vicki Campbell

Representatives: Paul Wicks, QC for Applicant  
Kevin McDonald for Respondent

Submissions received: 17 February 2015 from Applicant  
18 February 2015 from Respondent

Determination: 20 February 2015

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A. Kevin McDonald & Associates is ordered to pay to Mr Johnson costs of \$3,000.**

[1] In a determination dated 22 January 2015<sup>1</sup> I held that Mr Johnson had been unjustifiably dismissed and awarded remedies.

[2] The question of costs was reserved. As the parties have been unable to reach any agreement on this Mr Johnson, as the successful party, now seeks an order from the Authority for a contribution to his legal costs.

[3] Counsel has submitted that Mr Johnson's legal costs totalled \$12,273.95 and seeks to uplift the usual daily tariff of \$3,500 to an order for \$4,500.00. Kevin McDonald & Associates (Kevin McDonald) opposes the uplift and submits an amount of \$3,000 would be appropriate.

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<sup>1</sup> [2015] NZERA Auckland 15.

[4] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event.

#### **Determination of costs**

[5] As held recently by the Employment Court, the assessment of an appropriate contribution to costs in the Authority requires a different approach to assessing costs to that used by the Employment Court.<sup>2</sup> As noted in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*<sup>3</sup> awards in the Authority will be modest taking into account conduct which increases costs unnecessarily. Indemnity costs may be justified in relatively rare cases where a party's conduct is particularly egregious.<sup>4</sup>

[6] The Authority has been provided with evidence that Mr Johnson incurred costs of \$12,273.95. Submissions from Mr Johnson argue the uplift is appropriate because submissions had to be prepared and submitted following the conclusions of the investigation meeting.

[7] The investigation meeting took less than one day. According to the invoice dated 25 November 2014 Mr Johnson had entered into an agreement with Mr Wicks for a fixed fee arrangement which included the finalising and filing of written submissions. It is difficult to see how Mr Johnson's legal costs were increased as a result of requiring the parties to prepare and submit submissions after the investigation meeting had concluded.

[8] I consider it appropriate that Kevin McDonald makes a contribution to the costs incurred by Mr Johnson. Given the length of the investigation meeting Kevin McDonald & Associates is ordered to pay to Mr Johnson the sum of \$3,000.

Vicki Campbell  
Member of the Employment Relations Authority

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<sup>2</sup> *Booth v Big Kahuna Holdings Limited* [2015] NZEmpC 4 at [6].

<sup>3</sup> (2006) 7 NZELC 98,128; [\[2005\] ERNZ 808](#); (2005) 3 NZELR 1 (EMC).

<sup>4</sup> *Tomo v Checkmate Precision Cutting Tools Limited* [2015] NZEmpC 2 at [9].