

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 679
3243259

BETWEEN RAPHAEL KRUGER
 Applicant

AND JOLLYBIKES LIMITED
 Respondent

Member of Authority: Alex Leulu

Representatives: Tim Vogel, advocate for the Applicant
 Matthias John, for the Respondent

Submissions and further 9 and 24 October 2024 from the Applicant
information: 16 and 23 October 2024 from the Respondent

Determination: 15 November 2024

COSTS DETERMINATION OF THE AUTHORITY

[1] On 6 September 2024 the Authority upheld Raphael Kruger’s claims against JollyBikes Limited (JBL) for unpaid wages and holiday pay.¹ As part of its determination, the Authority reserved its decision on costs. A timetable was also set for memoranda to be filed if the parties were unable to resolve the issue of costs themselves. On 7 October 2024 Mr Kruger filed and served a memorandum asking the Authority to make a further determination for an award of costs against JBL. JBL also filed and served a response to Mr Kruger on 16 October 2024.

Costs principles

[2] Clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) gives the Authority discretion to order any party to a matter to pay to another party such costs and expenses as the Authority thinks reasonable. The unsuccessful party will usually have to contribute to the costs of the successful party, as well as meeting their own

¹ *Kruger v JollyBikes Limited* [2024] NZERA 537.

costs. A daily tariff applied by the Authority sets a starting point from which relevant factors and principles may guide an upward or downward adjustment of the amount of costs awarded.²

[3] Relevant principles governing costs in the Authority include consideration of whether the conduct of the parties increased costs unnecessarily, warranting an adjustment up or down, without compromising the Authority's otherwise modest approach to costs.³ Costs should not be used to punish a party or express disapproval of an unsuccessful party's conduct.

The parties' positions

[4] The investigation meeting for this matter proceeded over one and a half days. Mr Kruger sought an order of a contribution of costs against JBL for a total of \$3,125. Mr Kruger also presented two invoices from his representative which showed his total cost for representation was well above the claimed amount.

[5] JBL's views on costs was presented in the form of a letter which was addressed to Mr Kruger's representative (JBL's costs letter). JBL's costs letter mostly referred to evidence in respect of Mr Kruger's substantive claims. JBL also claimed it had incurred costs because of responding to Mr Kruger's claims. In summary, JBL opposed Mr Kruger's claims and requested for costs to lie where they fall.

Costs analysis and outcome

[6] Mr Kruger was successful in respect of his wages and holiday pay claims against JBL and is entitled to a contribution towards his costs. A fair and reasonable costs award, given all the relevant circumstances is in Mr Kruger's favour at his claimed amount of \$3,125 plus reimbursement of the filing fee.

[7] JBL is ordered to pay Mr Kruger \$3,125 as a contribution to costs incurred and \$71.55 to reimburse the filing fee.

Alex Leulu
Member of the Employment Relations Authority

² *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

³ See www.era.govt.nz/determinations/awarding-costs-remedies.