

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 351/08
5048491

BETWEEN

TRISTAN LUPI
Applicant

AND

WE WANT YOU MOTOR
GROUP LIMITED
Respondent

Member of Authority: Dzintra King

Representatives: Applicant In Person
Mark Ryan, Counsel for Respondent

Determination: 10 October 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] The applicant, Mr Tristan Lupi, was unsuccessful in his claim. The respondent seeks costs.

[2] The applicant was to file a memorandum within 28 days of the date of the substantive determination. The applicant did not file a memorandum until after the respondent filed a memorandum on 14 June.

[3] The respondent seeks costs against the applicant on the basis that it successfully defended the applicant's unjustified dismissal and unjustified disadvantage claims. The applicant was successful in his claims regarding deductions from wages and commission payments. These successful claims totalled \$3,500.

[4] The respondent incurred legal fees of \$5,500. It seeks an award of \$2,500.

[5] Mr Lupi's late submissions say he should not be liable for any of the respondent's costs and that he himself has not incurred any costs.

[6] The principles applicable to an award of costs in the Authority have been set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808. The Full Court set out a number of principles including that costs generally follow the event, are frequently judged against a notional daily rate and that awards will be modest. An award of costs is discretionary but the discretion is to be exercised accordance with principle and not arbitrarily. Costs are not to be punitive and will generally be modest. The conduct of the parties can also be taken into account.

[7] Given that Mr Lupi was successful in part of his claim, I am not prepared to make an award of costs

Dzintra King

Member of the Employment Relations Authority