



- c. C3 adopted a constructive and cooperative approach which limited the hearing time necessary and reduced costs;
- d. MUNZ was aware of the corporate structure and knew C3 was not the employer; and
- e. MUNZ produced no evidence to show there was a sham or façade which might allow the Authority to lift the corporate veil.

[3] Mr Mitchell submits while the matter was unusual an award of no more than \$1000 costs is warranted given the following:

- the investigation meeting was of two to three hours in duration and was able to be resolved promptly due in large part to cooperative counsel;
- the application was not vexatious or frivolous – C3’s failure to be clear in its communications with the applicant union and its members as to the identify of the employer resulted in the application being brought; and
- it would improper of the Authority to make a higher than usual costs award because C3’s actual costs were high.

### **Determination**

[4] *PBO Ltd v Da Cruz*<sup>1</sup> sets out the appropriate principles to be applied by the Authority in exercising of its costs discretion.

[5] It is usual that costs follow the event and I find that an award of costs is warranted in this matter. The Authority was assisted by counsel’s constructive approach to the investigation of this matter. This approach contained the evidential inquiry necessary and allowed the investigation to focus on the legal issues between the parties. Those issues were unusual and significant involving an inquiry into the structure of a parent company and it subsidiaries and the legitimacy of that structure. For these reasons I accept it was reasonable for a greater than usual level of costs to be incurred and that the usual tariff should be adjusted upwards.

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<sup>1</sup> [2005] 1 ERNZ 808

[6] Accepting a tariff of \$3000 per day as an appropriate starting point for costs in the Authority<sup>2</sup>, the significance of the issues to the parties and the actual hearing time I set the costs award at \$3000.

**[7] MUNZ is ordered to pay \$3000 to C3 Limited in costs plus \$808.89 in disbursements pursuant to Schedule 2 clause 15 of the Employment Relations Act 2000.**

Marija Urlich

Member of the Employment Relations Authority

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<sup>2</sup> *Chief Executive, Department of Corrections v Tawhiwhirangi (No 2)* [2008] ERNZ 73.