

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2011] NZERA Auckland 171
5355175**

BETWEEN	AEDENE MASSIE Applicant
AND	ALLAN AND NEENEE ONG t/a PHARMACY 72 Respondent

Member of Authority:	Eleanor Robinson
Costs Submissions	3 May 2012 from Applicant None from Respondent
Determination:	21 May 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination [2012] NZERA Auckland 117 the Authority found that the Applicant, Ms Aedene Massie, had been unjustifiably dismissed by the Respondents, Mr Allan Ong and Mrs Neenee Ong, trading as Pharmacy 72 (“Mr and Mrs Ong”).

[2] In that determination costs were reserved in the hope that the parties would be able to settle this issue between them. Unfortunately they have been unable to do so, and the Applicant has filed submissions in respect of costs.

[3] This matter involved 1 day of an Investigation Meeting, with written submissions being submitted subsequent to that. Mr Tee, on behalf of the Applicant, citing actual costs of \$4,567.72 (excluding GST) and excluding the costs associated with mediation, is seeking a contributory award of \$3,000.00 towards the actual costs.

[4] Mr Tee submitted that the contributory award level was reasonable in light of the fact that the Respondents had declined a reasonable settlement offer made at the commencement of the claim, although I note that there is no evidence filed in support of this statement.

Principles

[5] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 which states:

15 Power to award costs

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.*
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.*

[6] Costs are at the discretion of the Authority, as observed by the current Chief Judge Colgan in *NZ Automobile Association Inc v McKay*¹.

[7] The principles and the approach adopted by the Authority on which an award of costs is made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*².

[8] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*³ that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*⁴ at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.

[9] Having had regard to the principles set out in *Da Cruz*, the time taken for the Investigation Meeting, and the conduct of the parties, I consider that the contributory award claim made by the Applicant is reasonable.

Determination

[10] I see no reason in the current case for departing from the normal level of awards made by the Authority in similar circumstances. The normal rule is that costs follow the event and Ms Massie is entitled to a contribution to her costs.

[11] Accordingly, Mr and Mrs Ong are ordered to pay Ms Massie \$3,000.00 costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

Eleanor Robinson
Member of the Employment Relations Authority

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2005] 1 ERNZ 808

⁴ [2001] ERNZ 305

