

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 443
5396669

BETWEEN DIANNA MCQUADE
 Applicant

AND CRUSADER MEATS
 NEW ZEALAND LIMITED
 Respondent

Member of Authority: K J Anderson

Representatives: H Burdon, Advocate for Applicant
 S Menzies, Counsel for Respondent

Submissions received: 3 September 2013 from Respondent
 17 September 2013 from Applicant

Determination: 27 September 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 20 August 2013,¹ the Authority found that the claims of the applicant could not be upheld. The parties were invited to resolve the issue of costs but have not been able to do so. Submissions on costs have been provided by the parties in anticipation of the Authority determining this matter.

[2] The submissions for the respondent acknowledge the principles established by *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*.² One of the principles is the now well established daily tariff based approach used by the Authority. The respondent acknowledges that the investigation meeting was a relatively brief affair, given that the facts pertaining to the claims of Ms McQuade were not really in dispute. Indeed, it was accepted by both parties that legal submissions addressing the issue of frustration of contract were required. These were duly prepared and filed with the Authority in accordance with the agreed timetable.

¹ [2013] NZERA Auckland 373

² [2005] ERNZ 808

[3] It is submitted for the respondent that albeit the investigation was of a short duration, the combined time required for preparing for and attendance at the investigation meeting, along with the preparation of the legal submissions; was equivalent to a one day hearing. Therefore, the Authority should recognise this by making an order for costs of the sum of \$3,500: the current daily tariff commonly applied by the Authority.

[4] The submissions for the applicant also acknowledge the principles established under *Da Cruz* but it is posited that any award of costs should not exceed \$750. But no reason is given as to why this should be so. This is particularly odd given that the submissions then refer to various decisions of the Authority where the usual daily tariff approach has been applied in full; apart from one case where \$875 was awarded for a half day investigation meeting: *Ripeka Nathan-Bristow v Mana International Ltd t/a Kawakawa Four Square* [2012] NZERA Auckland 348. The investigation meeting for this matter took less than half of a day. The Authority has ascertained that the hearing was of a very short duration, with little preparation being required by the successful party.

Determination

[5] It is accepted that counsel for the respondent would have spent some time in regard to the preparation of legal submissions for this particular matter. Unfortunately, the Authority has not been provided with evidence of the actual time and costs involved. Therefore, I am left to make an assessment based on what is within the Authority's knowledge regarding a normal range of fees for experienced counsel, such as Mr Menzies, and the time that could reasonably be allowed for preparation for the investigation meeting and compiling the subsequent submissions. In the round I accept that it is appropriate to award costs on the basis that the combined time expended, including the preparation of witness statements and matters associated with this; and the legal submissions required by the Authority, would be equivalent to that required for a one day investigation meeting.

[6] Pursuant to clause 15 of the Second Schedule of the Employment Relations Act 2000, the Ms McQuade shall pay to the Crusader Meats New Zealand Limited the sum of \$3,500.00 as a contribution to the costs incurred by the company. The

respondent has informed that it is prepared to allow Ms McQuade a period of three months to pay any costs awarded and hence payment must be made not later than three months from the date of this determination.

K J Anderson
Member of the Employment Relations Authority