

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**[2012] NZERA Auckland 249  
5347355**

BETWEEN                      REX MOORE  
   Applicant  
  
AND                              AIRDRIE TOWING (2007)  
   LIMITED  
   Respondent

Member of Authority:        Eleanor Robinson  
  
Representatives:             Eddie Bluegum, Counsel for Applicant  
   Bev Richie, Advocate for Respondent  
  
Submissions received:        12 December 2011 from Applicant  
   No submissions from Respondent  
  
Determination:                25 July 2012

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     The Authority (Member D King) issued its determination on 23 November 2011 ([2011] NZERA Auckland 500). The determination upheld the applicant's claim and ordered the respondent to comply with a mediated Record of Settlement.

[2]     The applicant was successful and entitled to a contribution towards his actual costs. The Authority reserved leave for the parties to lodge memoranda as to resolution of costs.

[3]     This matter involved approximately a half day investigation meeting, with written submissions being submitted subsequent to that. The applicant is seeking actual costs of \$3,601.00 including GST.

[4]     The applicant in support of the level of the claim highlights as a significant factor for the consideration of the Authority the fact that the respondent has not as yet complied with the determination of the Authority.

[5]     The respondent has not filed a submission, but has by email dated 12 December 2011 protested the level of costs claimed by the applicant.

[6] 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.*

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

[8] 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*<sup>2</sup>.

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

[10] 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 a contributory award towards the Applicant’s actual costs is reasonable.

**Determination**

[11] For a case of this kind \$3,500.00 is accepted as the notional daily rate. Accordingly, Airdrie Towing (2007) Limited is ordered to pay Mr Rex Moore \$1,750.00 costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

**Eleanor Robinson**  
Member of the Employment Relations Authority

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<sup>1</sup> [1996] 2 ERNZ 622

<sup>2</sup> [2005] 1 ERNZ 808

<sup>3</sup> [2005] 1 ERNZ 808

<sup>4</sup> [2001] ERNZ 305