



# New Zealand Employment Relations Authority Decisions

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## Mosen v Anfield Engineering Limited (Auckland) [2007] NZERA 163 (23 July 2007)

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 171 A/07 5052648

BETWEEN David Mosen

Applicant

AND Anfield Engineering Limited

Respondent

Member of Authority: Vicki Campbell

Representatives: Chris Grenfell for Applicant

Stephen Clews for Respondent

Submissions received: 11 July 2007 from Applicant

21 June 2007 from Respondent

Determination: 23 July 2007

### COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 12 June 2007 I found that Mr Mosen had not been dismissed from his position as a welder but rather, that he left the Whangarei worksite of his own volition without completing a trial he himself had initiated.

[2] In my determination I reserved the question of costs and invited the parties to resolve the matter between them. They have been unable to do so and I am now in receipt of memorandum from both parties.

[3] I have considered the submissions made by the parties and I am satisfied that the discretion under clause 15 of Schedule 2 of the Act ought to be exercised in favour of Anfield Engineering Limited.

[4] The following principles are appropriate where the Authority is exercising **its discretion in relation to costs** (*PBO Ltd (formerly Rush Security Ltd) v Da Cruz*, [\[2005\] NZEmpC 144](#); [\[2005\] 1 ERNZ 808](#)):

There is a discretion as to whether costs should be awarded and what amount; The discretion is to be exercised in accordance with principle; The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority;

Equity and good conscience is to be considered on a case by case basis;

Costs are not to be used as a punishment or as an expression of disapproval of an unsuccessful party's conduct although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award;

It is open to the Authority to consider whether all or any of the parties costs were unnecessary or unreasonable;

That costs generally follow the event;

That without prejudice offers can be taken into account;

That awards will be modest;

That frequently costs are judged against a notional daily rate;  
The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[5] The respondent has incurred costs of \$2,953.12 plus disbursements of \$90.00 for a hearing which lasted less than one day. It seeks a contribution to those costs. The matter was not complex and the costs incurred are reasonable given the preparation required and the length of the hearing.

[6] Mr Mosen is required to pay to Anfield Engineering Limited the sum of \$750.00 including disbursements as a reasonable contribution to costs.

[7] An order is made accordingly.

Vicki Campbell

Member of the Employment Relations Authority

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