

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2013] NZERA Auckland 77
5384131 & 5384136**

BETWEEN	HENRY NEE NEE First Applicant ANDY NATHAN Second Applicant
AND	C3 LIMITED Respondent

Member of Authority:	Eleanor Robinson
Representatives:	Simon Mitchell, Counsel for Applicants Katherine Burson, Counsel for Respondent
Submissions received:	27 February 2013 from Applicant 11 February 2013 from Respondent
Determination:	5 March 2013

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] By determination [2012] NZERA Auckland 457 the Authority found that the Applicants, Mr Henry Nee Nee and Mr Andy Nathan, had not been unjustifiably dismissed by the Respondent, C3 Limited (C3).

[2] C3 was wholly successful and is entitled to a contribution towards its actual costs. 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 parties have filed submissions in respect of costs.

[3] This matter involved one day of an investigation meeting. Ms Muir, on behalf of C3, citing actual costs in excess of \$29,000.00 (exclusive of GST and disbursements), is seeking a contribution towards costs of \$3,500.00 in respect of each applicant.

[4] Mr Mitchell on behalf of the Applicants submits that although there may be occasions when awarding a tariff in excess of the Authority's normal daily tariff of \$3,500.00, this is not appropriate in this case.

[5] Mr Mitchell submits that the Applicants filed essentially identical Statements in Reply, with little additional evidence required to address both Applicants. Further that the legal submissions did not have to traverse any additional legal points as a result of there being two Applicants.

Principles

[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*¹.

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

[9] 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.

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2005] 1 ERNZ 808

⁴ [2001] ERNZ 305

Determination

[10] The matter before the Authority, although there were two Applicants, concerned virtually identical sets of fact arising out of the same incident. I accept that it was more efficient for the Authority to hear both matters together given the similar factual scenario.

[11] I further accept that there may have been some additional costs incurred in addressing the evidence of two Applicants rather than one, but consider that this would not have been significant given the circumstances.

[12] Accordingly I find that a small uplift in the normal daily tariff rate of \$3,500.00 is merited. Costs of \$4,000.00 are awarded in respect of the whole matter.

[13] Mr Nee Nee and Mr Nathan are each ordered to pay C3 the sum of \$2,000.00 towards its legal costs.

Eleanor Robinson
Member of the Employment Relations Authority