

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2012] NZERA Auckland 348
5365559**

BETWEEN RIPEKA NATHAN-BRISTOW
 Applicant

AND MANA INTERNATIONAL
 LIMITED t/a KAWAKAWA
 FOUR SQUARE
 Respondent

Member of Authority: Eleanor Robinson

Costs Submissions 21 September 2012 from Applicant
 None from Respondent

Determination: 8 October 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 14 October 2011 ([2012] NZERA Auckland 445), the Authority found that the Applicant, Ms Nathan-Bristow, had been unjustifiably dismissed and unjustifiably disadvantaged by the Respondent, Mana International Limited trading as Kawakawa Four Square (Kawakawa Four Square).

[2] In that determination costs were reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately they have been unable to do so, and Mr Nutsford, on behalf of Ms Nathan-Bristow, has filed a submission in respect of costs.

[3] The matter involved slightly less than half a day of meeting time. Mr Nutsford, citing actual costs of \$4,823.99 (including GST and disbursements), is seeking recovery of costs.

Principles

[4] 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.*

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

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

[7] 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.

[8] A tariff based approach is that usually adopted by the Authority, which has the discretion to raise or lower the tariff, depending on the circumstances. For a 1 day Investigation Meeting this would normally equate to an award of \$3,500.00.

Determination

[9] 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 Nathan-Bristow is entitled to a contribution to her costs.

[10] For a case of this kind \$3,500.00 is accepted as the notional daily rate. The Investigation Meeting took less than a half day. Accordingly, Kawakawa Four Square is ordered to pay Ms Nathan-Bristow \$875.00, costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2005] 1 ERNZ 808

⁴ [2001] ERNZ 305

[11] Ms Nathan-Bristow has also claimed reimbursement of \$146.36 in respect of disbursements. Disbursements are normally recoverable and are supported by invoices. I am satisfied that \$146.36 is an appropriate amount for Kawakawa Four Square to contribute.

[12] Kawakawa Four Square is ordered by pay Ms Nathan-Bristow \$875.00 towards its legal costs and \$146.36 as disbursements pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

Eleanor Robinson
Member of the Employment Relations Authority