

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 298A/09
5103894

BETWEEN SUSAN PARK
 Applicant

AND COFFEE SUPPLIERS
 LIMITED
 Respondent

Member of Authority: Vicki Campbell

Submissions Received: 10 September 2009 from Applicant
 7 September 2009 from Respondent

Determination: 14 September 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 24 August 2009 I found Ms Park had not been unjustifiably dismissed by Coffee Suppliers Limited, but did find arrears of wages were outstanding. 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 that and I am now in receipt of memorandum from both parties.

[2] 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] 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.

[3] In addition, the Court has stated that there is nothing wrong with a tariff based approach so long as it is not applied in a rigid manner without regard to the particular characteristics of the case.

[4] On behalf of Ms Park, Mr Fox seeks to have costs lie where they fall as Ms Park is in receipt of an invalid's benefit. While inferences might reasonably be made about Ms Park's financial resources the Authority will not speculate on the ability of Ms Park to pay without evidential support.

[5] The Act, at clause 15 of Schedule 2, by providing for awards of costs clearly contemplates that although a party has the right to have a personal grievance investigated by the Authority, the exercise of that right provides no forgiveness from liability for costs in the event of the party's claim being unsuccessful.

[6] Having considering the submissions of the parties I direct Ms Park to pay to Coffee Suppliers Limited the sum of \$500 as a contribution to its costs and, given Ms Park's circumstances, I note that it is likely that that amount may need to be paid on a time basis.

[7] An order is made accordingly.

Vicki Campbell
Member of Employment Relations Authority