**IN THE EMPLOYMENT RELATIONS AUTHORITY**
**CHRISTCHURCH**

[2011] NZERA Christchurch 192
5326715

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| BETWEEN | NICOLA PENNEY<br>Applicant |
| AND | DIRECT FREIGHT LIMITED<br>Respondent |

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| Member of Authority: | M B Loftus |
| Representatives: | Rex Hancock, Advocate for the Applicant<br>Mary Lindstrom, for the Respondent |
| Submissions Received | 7 November 2011 from the Applicant<br>Nil from the Respondent |
| Determination: | 2 December 2011 |

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## DETERMINATION OF THE AUTHORITY

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[1] In a determination dated 28 October 2011 I accepted Ms Penney's claim that she had been unjustifiably dismissed by Direct Freight Limited.

[2] The issue of costs was reserved with Ms Penney, as the successful party, being advised that if she wished to seek a contribution toward her costs, she should do so via a written application. She does.

[3] Direct freight was advised that if it wished to dispute the claim it must do so within 14 days.

[4] On her behalf Ms Penney's advocate quotes a passage similar to 6 below from one of my earlier costs decisions. He then refers to the fact there was no finding of contribution on Ms Penney's part before submitting:

> *In accordance with the authorities and the formula … I submit that costs of $1,000 are awarded in full against the respondent as the applicant did not contribute to her dismissal.*

[5] There is no further argument or submission from the applicant and absolutely nothing from the respondent given a failure to reply within the time period stipulated in the original decision, or subsequently.

[6] Normally the Authority will assess costs on a daily tariff basis: refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808. In assessing that tariff a common starting point is $3,000 per day: refer *Chief Executive of the Department of Corrections v Tawhiwhirangi (No 2)* [2008] ERNZ 73. From that point adjustment may occur depending on the circumstances.

[7] The hearing took approximately half a day (albeit spread over two days) which means, applying *Da Cruz* and *Tawhiwhirangi (No 2),* the award would be $1,500.

[8] There is no argument supporting an increased award – indeed the amount sought is less. There is also, given the lack of response from Direct Freight, no reason as to why a lesser amount be ordered.

[9] Given the above, I consider amount sought appropriate and order Direct Freight to pay Ms Penney the sum of $1,000 (one thousand dollars) as a contribution toward costs.

M B Loftus
Member of the Employment Relations Authority