

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2014] NZERA Auckland 214
5442433**

BETWEEN

TUREI PETERS
Applicant

AND

BAY PACKERS (NZ) LTD
Respondent

Member of Authority: Eleanor Robinson
Representatives: David Hayes, Counsel for Applicant
Steven Meredith for Respondent
Submissions received: 22 May 2014 from Applicant
3 June 2014 from Respondent
Determination: 04 June 2014

DETERMINATION OF THE AUTHORITY

[1] By determination [2014] NZERA Auckland 191 the Authority found that the Applicant, Mr Turei Peters, had been unjustifiably dismissed by the Respondent, Bay Packers (NZ) Ltd (Bay Packers).

[2] In that determination 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.

Costs

[3] This matter involved less than half a day of an investigation meeting.

Principles

[4] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) 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 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 and outlined in *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] It is also a principle that costs are not to be used to punish the unsuccessful party.

Determination

[9] 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 half day investigation meeting this would normally equate to \$1,750.00. In this case, the Investigation Meeting took less than a half day

[10] In determination [2013] NZERA Auckland 191 the amount awarded by the Authority to Mr Peters for hurt and humiliation under s 123(1)(c)(i) of the Act had been reduced by 100% on the basis of contributory conduct. To also take that fact into consideration when assessing the level of costs to be awarded, I consider would have the effect of further ‘punishing’ Mr Peters, which is not a principle to be used when assessing costs.

[11] The normal rule is that costs follow the event and having considered all of the circumstances, I can see no justification for not making the costs award to Mr Peters as the successful party in the proceedings.

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2005] 1 ERNZ 808

⁴ [2001] ERNZ 305

[12] I order Bay Packers to contribute \$1,500.00 towards Mr Peter's actual costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

[13] Mr Peters is also to be reimbursed the filing fee of \$71.56.

Eleanor Robinson
Member of the Employment Relations Authority