

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2012] NZERA Auckland 458  
5373402

BETWEEN                      LEIGH POWRIE  
   Applicant  
  
A N D                              TE PUKE PARTSWORLD  
   LIMITED  
   Respondent

Member of Authority:        James Crichton  
  
Representatives:              David Flaws, Advocate for Applicant  
   Linda Fox, Counsel for Respondent  
  
Submissions Received:      12 November 2012 from Applicant  
   14 November 2012 from Respondent  
  
Date of Determination:      14 December 2012

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**COSTS DETERMINATION OF THE AUTHORITY**

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**The substantive determination**

[1]     In the substantive determination of the Authority issued on 16 October 2012 the Authority found personal grievances for unjustified dismissal and unjustified disadvantage.

[2]     Costs were reserved.

**The application for costs**

[3]     Submissions filed for Mr Powrie seek an award of costs in the sum of \$3,500. The Authority is told that that is the full amount of costs incurred by Mr Powrie in the investigation meeting.

[4] Mr Powrie notes that the effect of the time taken to investigate the matter was a notional sitting day and by implication, it appears the suggestion is that the daily tariff should apply.

[5] In response, Te Puke Partsworld, while noting the awards made by the Authority against it as respondent, advises the Authority that it will have genuine difficulty in meeting those claims already awarded, and will need leave to pay over time. It is submitted that a further impost of costs would unfairly prejudice the ability of Te Puke Partsworld to meet the awards already made by the Authority and therefore costs should lie where they fall

### **The law**

[6] The Authority has been referred to the leading case on costs fixing in its jurisdiction, *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808. In that decision, Judge Shaw, giving judgment for the Full Court, identified the “*basic tenets*” to be applied by the Authority in a costs fixing environment as including the principle that costs should generally follow the event, the award of costs is discretionary but the award must be exercised in accordance with principle, that costs in the Authority will usually be modest and that the Authority regularly assesses costs against a notional daily rate.

[7] The Authority has also derived considerable assistance from the formulation proposed in the earlier Authority decision *Graham v. Airways Corporation of New Zealand Ltd* (Employment Relations Authority, Auckland, AA39/04, 28 January 2004) where the Authority postulated a three step approach in evaluating applications for costs. The first step was the identification of the actual costs incurred by the successful party, the second was a consideration of whether, in all the circumstances, those costs were reasonable, and the third was the determination of what proportion of those costs ought to be met by the unsuccessful party.

### **Determination**

[8] Applying *Graham* to the present case, we know that Mr Powrie incurred total costs in the matter of around \$3,500. The next issue to establish using the *Graham* formulation is whether or not the costs incurred are reasonable. Despite Mr Powrie’s claim that the effect of the various portions of the investigation undertaken by the Authority was to create what amounted to a day long fixture, the reality was that Mr Powrie’s able advocate was only involved for a much shorter period of barely half

a sitting day. The Authority observes that Mr Powrie's advocate could reasonably expect to levy a fee of \$3,500 if he had been required for a full day. As it is, the fee charged, in the Authority's opinion, rather overstates the entitlement.

[9] Furthermore, there is nothing in the submissions for Mr Powrie to justify the conclusion that Te Puke Partsworld should meet all of Mr Powrie's costs. The purpose of a costs award is to have the unsuccessful party **contribute to** the costs of the successful party, not to meet them in full unless the Authority is satisfied that special circumstances apply. No such special circumstances are argued for in the present case and the Authority is unable to imagine what those special circumstances might be in the present case.

[10] Furthermore, the Authority is obligated to consider the circumstances of Te Puke Partsworld. Just because it is an employer does not make it inevitable that it has unlimited cash resources to meet the consequences of employment claims brought against it. The Authority must take into account the submission made on Te Puke Partsworld's account that it is not flush with funds.

[11] In all the circumstances, the Authority thinks a proper contribution to the fees charged to Mr Powrie by his advocate is \$750 and Te Puke Partsworld is directed to pay that sum as a contribution to Mr Powrie's costs.

[12] If required, time to pay is allowed.

James Crichton  
Member of the Employment Relations Authority