



# New Zealand Employment Relations Authority Decisions

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## Rajkarnikar v Emacs Group Ltd (Auckland) [2013] NZERA 952; [2013] NZERA Auckland 508 (12 November 2013)

Last Updated: 5 June 2017

### IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2013] NZERA Auckland 508  
5422146

BETWEEN HASINA RAJKARNIKAR Applicant

AND EMACS GROUP LTD Respondent

Member of Authority: Eleanor Robinson

Representatives: David Prisk, Advocate for Applicant

Ragu Ragunathan Advocate for Respondent

Submissions received: 21 October 2013 from Applicant

11 November 2013 from Respondent

Determination: 12 November 2013

#### COSTS DETERMINATION OF THE AUTHORITY

#### Employment Relationship Problem

[1] By determination [2013] NZERA Auckland 450 the Authority found that the Applicant, Ms Hasina Rajkarnikar, had been unjustifiably dismissed by the Respondent, Emacs Group Limited (Emacs). Ms Rajkarnikar was successful in her claim and is entitled to a contribution towards her actual costs.

[2] 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 Ms Rajkarnikar has filed submissions in respect of costs.

[3] This matter involved a half day of an investigation meeting. Mr Prisk, on behalf of

Ms Rajkarnikar is seeking all legal costs in the sum of \$2,875.00 (incl GST).

[4] Emacs submits that no costs should be awarded to Ms Rajkarnikar on the basis that she should bear the costs associated with raising a personal grievance and the associated Authority investigation meeting.

#### *Principles*

[5] 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.*

[6] Costs are at the discretion of the Authority, as observed by the current Chief Judge

Colgan in *NZ Automobile Association Inc v McKay*<sup>1</sup>.

[7] The principles and the approach adopted by the Authority on which an award of costs are made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>2</sup>.

[8] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>3</sup> that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*<sup>4</sup> at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.

## **Determination**

[1] The normal rule is that costs follow the event and Ms Rajkarnikar is entitled to a contribution to her costs.

[2] It is unusual for the Authority to allow preparation time per day of the investigation meeting, and I am not persuaded that this is a matter in which I should depart from that position.

[9] Having had regard to the principles set out in *Da Cruz*, the time taken for the

Investigation Meeting, and the conduct of the parties, I consider that a contributory award

towards Ms Rajkarnikar’s actual costs is reasonable.

<sup>1</sup> [\[1996\] 2 ERNZ 622](#)

<sup>2</sup> [\[2005\] NZEmpC 144](#); [\[2005\] 1 ERNZ 808](#)

<sup>3</sup> [\[2005\] NZEmpC 144](#); [\[2005\] 1 ERNZ 808](#)

<sup>4</sup> [\[2001\] NZCA 313](#); [\[2001\] ERNZ 305](#)

[10] Adopting the notional daily tariff rate of the Authority as \$3,500.00, I take that as the appropriate starting point for costs.

[11] I order Emacs to contribute \$2,500.00 towards Ms Rajkarnikar’s actual costs.

[12] Ms Rajkarnikar is also to be reimbursed the filing fee of \$71.56.

**Eleanor Robinson**

**Member of the Employment Relations Authority**