

[4] 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.

[5] Ms Paterson submits that the respondent was put to unnecessary costs as a result of the finding on the 90 day issue. Ms Paterson submitted that had the 90 day issue been determined first the respondent would not have been required to prepare such detailed evidence.

[6] What Ms Paterson's submissions fail to take into account is that the penalty action and arrears of wages claim were not subject to the 90 day period and therefore a second hearing would have been necessary. In requiring all matters to be considered in one hearing, the parties were in fact saved the additional costs of attending a second day.

[7] Mr Eden has not provided me with any detail as to how he incurred his costs which I have been advised were \$25,153.92. I am therefore unable to assess whether the costs incurred by Mr Eden were reasonable or not. The costs do, however, for a one day hearing, seem larger than I would normally expect to see.

[8] The claims and counter-claims in this matter were important for both parties. While the matter was not overly complex I am satisfied Mr Eden was put to expense in answering all of Mr Slingsby's claims against him in some detail. I accept that in some part this was due to Mr Slingsby's failure to quantify, in particular, his claims for arrears of wages.

[9] Taking into account the preparation required and the length of the hearing, Mr Slingsby is required to pay to Mr Eden \$4,000 as a contribution to his costs.

[10] An order is made accordingly.

Vicki Campbell
Member of Employment Relations Authority