

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2017] NZERA Auckland 49  
5568780

BETWEEN            RICHARD STAUNTON  
                                 Applicant  
  
A N D                TRANSDEV AUCKLAND  
                                 LIMITED  
                                 Respondent

Member of Authority:    Nicola Craig  
  
Representatives:        Applicant in person  
                                 John Rooney, Counsel for Respondent  
  
Submissions Received:    23 December 2016 from Respondent  
                                 21 February 2017 from Applicant  
  
Date of Determination:    23 February 2017

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**COSTS DETERMINATION OF THE AUTHORITY**

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- A.    Richard Staunton is ordered to pay to Transdev Auckland Limited, within 28 days of the date of this determination, \$5,000.00 as a contribution towards its costs.**

**The substantive determination**

[1]    In a determination of the Authority dated 9 December 2016<sup>1</sup>, Transdev Auckland Limited (Transdev) successfully defended all of the claims brought by its former employee Richard Staunton (Mr Staunton).

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<sup>1</sup>        [2016] NZERA Auckland 402

[2] Mr Staunton's initial claim was that he was unjustifiably dismissed, which included aspects of alleged breaches of good faith and disparity of treatment. Mr Staunton sought reinstatement in relation to the dismissal claim. He later added claims that Transdev breached the applicable collective employment agreement in several regards.

### **Costs application and submissions**

[3] The parties were invited by the Authority to resolve the costs issue between them. They were unable to do so.

[4] Transdev applies for an award of costs to be made in its favour. An invoice was filed indicating that Transdev had incurred \$20,309.50 (excluding GST) in legal fees in relation to this case.

[5] Transdev seeks costs at the notional daily tariff rate of \$3,500 per day, totalling \$7,000 for the two day meeting. It acknowledges that although it incurred considerably more costs than that, it has been unable to identify any factors which should result in the Authority departing from the notional daily tariff.

[6] Mr Staunton put in a brief response to the Authority, noting that an extension of time for the meeting was to allow for Transdev's witnesses.

### **Determination on costs**

[7] The Authority has the power to award costs under clause 15 of Schedule 2 of the Employment Relations Act 2000. This confers on the Authority a wide discretion to award costs on a principled basis.

[8] The principles guiding the Authority's approach to costs are set out by the full Employment Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*<sup>2</sup>. The principles include:

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<sup>2</sup> [2005] 1 ERNZ 808

- The discretion regarding costs is to be exercised in accordance with principle and not arbitrarily;
- The statutory jurisdiction to award costs is consistent with the equity and good faith 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 for an unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award;
- Costs generally follow the event;
- Awards will be modest;
- Frequently costs are judged against a notional daily tariff.

[9] In the present case, there is no basis on the material before me, to establish that costs should not follow the event. I therefore find that Transdev is entitled to a contribution towards its costs.

[10] The notional daily tariff applicable to this case is \$3,500 per day.

[11] The investigation meeting was originally set down for one day. However, once Mr Staunton filed his amended statement of problem, setting out breach of contract claims, Transdev decided to call two additional witnesses and suggested an additional half day for the investigation meeting.

[12] The meeting was carried out over two days. However, a large portion of the morning of the second day was taken up with mediation which was suggested by the Authority and agreed to by the parties. I do not consider that fees for that part of the day should be taken into account in determining the total tariff, as costs are not usually awarded for legal fees incurred for mediation. Deducting half a day's time for mediation leaves a little over \$5,000 remaining from the notional daily tariff for two days.

[13] The daily tariff is not designed to reimburse a successful party for their entire actual costs. Instead it reflects a contribution to actual and reasonable costs incurred by the party which is claiming costs.

[14] Considering all of the circumstances, I order that \$5,000.00 be paid to Transdev by Mr Staunton within 28 day of the date of this determination, as a contribution towards its costs.

Nicola Craig  
Member of the Employment Relations Authority