

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 97
5354715

BETWEEN CHRISTINE STEWART
 Applicant

AND THE COMMISSIONER
 OF POLICE
 Respondent

Member of Authority: K J Anderson

Representatives: F Wood, Counsel for Applicant
 K Sagaga, Counsel for Respondent

Submissions received: 4 February 2013 from Applicant
 14 February 2013 from Respondent

Determination: 22 March 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 26th November 2012¹ the Authority found that the dismissal of Ms Stewart was unjustified and remedies were awarded. The parties were invited to resolve the issue of costs. The parties have been unable to reach an agreement regarding an appropriate level of costs and submissions have now been received from both parties in order for the Authority to determine this issue.

[2] The applicant has incurred costs of a little more than \$17,000 related to the proceedings in the Authority (invoices have been provided), with more costs incurred related to the mediation process. But of course, mediation costs are not usually a matter for consideration by the Authority. The submissions for the applicant refer the Authority to starting point used by the Court of Appeal (and the Employment Court) being 66% of reasonably incurred costs.² But as was established by *PBO Ltd*

¹ [2012] NZERA Auckland 417

² *Binnie v Pacific Health* [2002] 1 ERNZ 438

(formerly *Rush Security Ltd*) v *Da Cruz*,³ the Authority is not bound by the *Binnie* approach and it is now well established by *Da Cruz* that the Authority can (and does), adopt a tariff based approach with the current tariff being \$3,500 per day of hearing. This sum can be increased or reduced taking into account any particular aspects of a case that may warrant a modification of the “base” rate.

[3] There was nothing particularly unusual about this case and the applicant was largely (but not totally) successful with her claims, albeit some contribution on her part was found.

Determination

[4] The investigation meeting was a reasonably standard affair and the parties conducted their respective cases efficiently and comfortably within one day. Therefore, I conclude that it is appropriate to award costs on the basis of one day of hearing time. Pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000, The Commissioner of Police shall pay to Ms Stewart the sum of \$3,500.00 as a contribution towards the costs incurred in pursuing her personal grievance.

K J Anderson
Member of the Employment Relations Authority

³ [2005] ERNZ 808