

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 179
5614288

BETWEEN PATRICK TOIA
 Applicant

A N D AARIZ TYRES & AUTO
 LIMITED
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Alan Charman, Advocate for Applicant
 No appearance for Respondent

Date of Determination: 8 June 2016

**COSTS DETERMINATION OF
THE EMPLOYMENT RELATIONS AUTHORITY**

- A. Aariz Tyres & Auto Limited is ordered to contribute \$500 towards Mr Patrick Toia's costs which are to be paid within 14 days of the date of this determination.**

The substantive determination

[1] In an oral determination of the Authority issued on 31 May 2016¹, the Authority determined that:

- (a) Mr Patrick Toia was unjustifiably dismissed from his employment by Aariz Tyres & Auto Limited (Aariz).
- (b) Mr Toia was awarded the following sums in remedies:

¹ [2016] NZERA Auckland 171

- (i) \$5,000 compensation for humiliation, loss of dignity and injury to feelings in respect of his unjustifiable dismissal pursuant to s.123(1)(c)(i) of the Employment Relations Act 2000 (the Act);
- (ii) Reimbursement of wages pursuant to s128 of the Act amounting to \$3,313 gross;
- (iii) Unpaid wages of \$5,771.25 gross;
- (iv) Holiday pay amounting to \$1,433.68 gross.

Costs determination

[2] Mr Charman sought costs on behalf of the applicant, in accordance with the Authority's normal daily tariff being \$3500 in respect of each day of an investigation meeting.

The Authority's power to award costs

[3] The Authority's power to award costs arises from Schedule 2, clause 15 of the Act. This confers a wide discretion on the Authority to award costs on a principled basis.

[4] The Full Employment Court decision in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*² sets out the principles that apply to awards of costs in the Authority. The principles are so well established that there is no need for them to be repeated.

[5] The general principle is that costs follow the event, and I see no reason to depart from that in this case. Mr Toia was successful in his claim and should be awarded costs.

[6] The Employment Court in *Carter Holt Harvey v. Eastern Bays Independent Industrial Workers Union & Ors*³ observed that a notional daily tariff approach, which was to be adjusted in a principled way, was best suited to the Authority's unique

² [2005] 1 ERNZ 808, para.44

³ [2011] NZEmpC 13

jurisdiction. This approach has been affirmed by the Employment Court recently in *Fagotti v. Acme & Co Ltd*⁴. I adopt that approach.

[7] The normal starting point for costs in the Authority is \$3,500 per day. The investigation meeting took approximately 1 and ½ hours. This would equate to \$656.25 in costs based on the Authority's normal daily tariff.

[8] However, Mr Toia did not file a witness statement and as there was no appearance by Aariz, I consider in the circumstances costs of \$500 to be appropriate.

[9] Accordingly, I order costs of \$500 to be paid by Aariz to Mr Toia within 14 days of the date of this determination.

Anna Fitzgibbon
Member of the Employment Relations Authority