

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**[2012] NZERA Auckland 271  
5367376**

BETWEEN                      BILLIE TAITUHA  
                                         Applicant  
  
AND                                TE TII WAITANGI  
                                         INVESTMENTS LIMITED  
                                         Respondent

Member of Authority:        Eleanor Robinson  
  
Costs Submissions            26 July 2012 from Applicant  
                                         08 August 2012 from Respondent  
  
Determination:                9 August 2012

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] By determination [2012] NZERA Auckland 219 the Authority found that the Applicant, Ms Billie Taituha, had been unjustifiably dismissed by the Respondent, Te Tii Waitangi Investment Limited ("TTWI).

[2] In that determination 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 the Applicant has filed submissions in respect of costs.

[3] This matter involved approximately one and a half days of an Investigation Meeting, with written submissions being submitted subsequent to that. Mr Taituha, on behalf of the Applicant, is claiming costs of \$15,669.32.

[4] The expenses claimed by Mr Taituha include legal expenses of \$1,719.32 incurred prior to the Investigation Meeting and associated with preparation of the case for the Applicant, travel and other out of pocket expenses of \$6,500.00, and Investigation Meeting expenses of \$7,250.00.

*(i) Legal costs claim*

[5] Mr Broadbelt, noting that the Applicant was not represented by legal counsel or other appropriately qualified people at the Investigation Meeting, submits that the legal costs

referred to by Mr Taituha are for legal advice and do not constitute representation at the Investigation Meeting. As such they should be disregarded.

[6] Mr Broadbelt further submits that the newspaper advertisement costs of \$126.66 included with the costs itemised under the 'legal expenses' heading be excluded as not being a cost that would fall under the consideration of the Authority.

*(ii) Out of Pocket Expenses*

[7] Mr Broadbelt submits that these are excessive and unsupported by detail.

*(iii) Meeting Schedule Expenses*

[8] Mr Broadbelt again submits that the expenses grouped under this head of claim are not associated with the costs of representation at the Investigation Meeting and as such should be disregarded.

[9] In particular Mr Broadbelt submits that the costs prior to events outside of the Investigation Meeting should be excluded, and that the costs of attending the Investigation Meeting on 1 and 2 May 2012 of \$2,000.00 and \$1,000.00 should be excluded on the basis of no representation by legal counsel or other appropriately qualified people.

[10] Mr Broadbelt further submits that the direct cost of representation to the Respondent was \$10,197.27, some of which was attributable to preparing for the evidence of Applicant witnesses' evidence of which two of these witnesses did not attend the Investigation Meeting, or indeed in the case of one witness, the subsequent conference call when summoned to do so by the Authority.

[11] In summary, it is Mr Broadbelt's submission that costs should lie where they fall taking into consideration the factors outlined above and on the basis that whilst the Applicant succeeded on her claim that she was unjustifiably dismissed, the Applicant was held to have significantly contributed to the situation which resulted in the termination of her employment.

*Principles*

[12] 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.*

[13] 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>.

[14] 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>.

[15] 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**

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

[17] It is unusual for the Authority to allow a costs claim in respect of preparation time for an investigation meeting. However in this particular case I accept that the Applicant should be allowed costs in respect of the legal advice taken, but only for the legal costs incurred following the date of Ms Taituha’s dismissal on 5 October 2011 and prior to the Investigation Meeting on 1 May 2012.

[18] . Accordingly, TTWI is ordered to pay Ms Taituha \$1,521.00 costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**

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<sup>1</sup> [1996] 2 ERNZ 622

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

<sup>3</sup> [2005] 1 ERNZ 808

<sup>4</sup> [2001] ERNZ 305

