

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 222
5441627

BETWEEN BRYCE TOZER
 Applicant

A N D FRANIX CONSTRUCTION
 LIMITED
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Hugh Fulton, Counsel for Applicant
 David Dickinson, Counsel for Respondent

Submissions Received: Written submissions from Applicant on 23 May 2014
 Verbal submissions from Respondent on 30 May 2014

Date of Determination: 09 June 2014

COSTS DETERMINATION OF THE AUTHORITY

**A. Franix Construction Limited is ordered to contribute \$3500
 towards Mr Tozer's costs plus the filing fee of \$71.56.**

The substantive determination

[1] In a determination of the Authority dated 05 May 2014¹ the Authority determined that the underlying and true nature of the relationship between Franix Construction Limited (Franix) and Mr Tozer was that of an employment relationship. Accordingly, the Authority found that it had jurisdiction to deal with Mr Tozer's personal grievance.

¹ [2014] NZERA Auckland 170

[2] A memorandum of costs was filed on behalf of Mr Tozer seeking a contribution of \$3,581.56 (including GST and expenses) towards his costs. This amount was discounted.

[3] Mr Dickinson informed the Authority by memorandum dated 23 May 2014, that Mr Clive Elliott QC had been instructed and sought to have the issue of costs dealt with following discussions between Mr Fulton and Mr Elliott.

[4] During a telephone conference between the parties held on 30 May 2014 Mr Dickinson verbally submitted that a written memorandum as to costs was not going to be filed. This was despite being given until 6 June 2014 to do so. Mr Dickinson submitted that costs should be awarded in accordance with the Authority's normal daily tariff.

[5] The Authority's power to award costs arises from Schedule 2, clause 15 of the Employment Relations Act 2000 (the Act). This confers a wide discretion on the Authority to award costs, on a principled basis.

[6] 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*². Those principles are so well recognised I do not need to restate them.

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

[8] The Employment Court in *Carter Holt Harvey v. Eastern Bays Independent Industrial Workers Union and 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 jurisdiction. I adopt that approach.

[9] The normal starting point for costs in the Authority is \$3,500 per day, *Fifita (aka Bloomfield) v. Dunedin Casinos Limited*⁴. This matter involved an investigation meeting of a full day. Mr Tozer seeks 3,581.56 (including GST and expenses)

² [2005] 1 ERNZ 808

³ [2011] NZEmpC

⁴ [2012] NZERA Christchurch 219

towards his costs and expenses. This amount is almost the same as the notional daily tariff. It is my view that this is a case for which costs at the notional daily tariff is appropriate. Accordingly, I order Franix to contribute \$3500 towards the costs of Mr Tozer plus the filing fee of \$71.56.

[10] I order costs to be paid by Franix to Mr Tozer within 14 days of the date of this determination.

Anna Fitzgibbon
Member of the Employment Relations Authority