

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2013] NZERA Auckland 436
5392167**

BETWEEN

PHILLIPPA WHAANGA
Applicant

AND

SHARP SERVICES LIMITED
Respondent

Representatives Greg Bennett for Applicant
Respondent in person

Costs Submissions 10 September 2013 from Applicant
None from Respondent

Determination: 24 September 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination [2013] NZERA Auckland 354 the Authority found that the Applicant, Ms Phillippa Whaanga, had been unjustifiably dismissed by the Respondent, Sharp Services Limited (SSL).

[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 a half day of an Investigation Meeting, with written submissions being submitted subsequent to that. Mr Bennett, on behalf of the Applicant, is claiming costs of \$4,500.00.

[4] Mr Bennett submits that there should be an increase in the Authority's normal daily tariff due to the conduct of the Respondent who failed to disclose documents in a timely manner.

Principles

[5] 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.

[6] Costs are at the discretion of the Authority, as observed by the current Chief Judge Colgan in *NZ Automobile Association Inc v McKay*¹.

[7] 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*².

[8] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*³ that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*⁴ at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.

Determination

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

[10] Having considered the conduct of the Respondent, I note that SSL was self-represented in this matter.

[11] Having had regard to the principles set out in *Da Cruz*, the time taken for the Investigation Meeting, and the conduct of the parties, I consider that a contributory award towards the Applicant’s actual costs is reasonable.

[12] Adopting the notional daily tariff rate of the Authority as \$3,500.00, I take that as the appropriate starting point for costs.

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2005] 1 ERNZ 808

⁴ [2001] ERNZ 305

[13] I order SSL to contribute \$1,750.00 towards Ms Whaanga's actual costs.

Eleanor Robinson
Member of the Employment Relations Authority