



[3] The following principles are appropriate where the Authority is exercising its discretion in relation to costs (*PBO Ltd (formerly Rush Security Ltd) v Da Cruz*, [2005] 1 ERNZ 808):

- There is a discretion as to whether costs should be awarded and what amount;
- The discretion is to be exercised in accordance with principle;
- The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority;
- Equity and good conscience is to be considered on a case by case basis;
- Costs are not to be used as a punishment or as an expression of disapproval of an unsuccessful party's conduct although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award;
- It is open to the Authority to consider whether all or any of the parties costs were unnecessary or unreasonable;
- That costs generally follow the event;
- That without prejudice offers can be taken into account;
- That awards will be modest;
- That frequently costs are judged against a notional daily rate;
- The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[4] The purpose of an award of costs is to recompense a party who has been successful in litigation, for the cost of being represented in that litigation by counsel or an advocate. Mr Whinn was in receipt of a legal aid grant.

[5] I do not agree with the submissions made on behalf of Tairua Landing Limited that any costs award will amount to a "windfall" for Mr Whinn if Mr Whinn is not required to reimburse the Legal Services Agency. I expect that the total sum of costs awarded in this determination will be paid to the Legal Services Agency as a reimbursement of the grant made to Mr Whinn to pursue his case.

[6] Ms Hope submitted that the total Legal Aid costs came to \$2,466.22 including fees and disbursements. She seeks a contribution of \$1,869.72 which includes fees and disbursements.

[7] Ms Hope has not specified the particulars of the disbursements, except to say that they "...include travel". Without knowing what the disbursements were I can not properly make any orders, except with regard to the filing fee which is \$70.00.

[8] The matter was not complex and the hearing lasted one day. Taking into account the preparation required and the length of the hearing, usually an award of between \$1,500 and \$3,000 would be appropriate for a one day hearing in the Authority. However, in this case I have also taken into account the limited extent to which Mr Whinn was successful. Tairua Landing Limited is to contribute \$750 towards Mr Whinn's legal fees and \$70.00 disbursements.

[9] An order is made accordingly.

Vicki Campbell  
Member of Employment Relations Authority