

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 27
5631932

BETWEEN DENYM WILLIAMS
 Applicant

A N D CUSTOM MOTOR BODIES
 (1998) LIMITED
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: May Moncur, Representative for Applicant
 Peter Gilling, Director of Respondent

Date of Determination: 1 February 2017

**COSTS DETERMINATION OF
THE EMPLOYMENT RELATIONS AUTHORITY**

- A. Custom Motor Bodies (1998) Limited is ordered to contribute \$4,500 towards Mr Denym Williams' costs and to reimburse the filing fee of \$71.56, both within 14 days of the date of this determination.**

The substantive determination

[1] In an oral determination of the Authority issued on 19 January 2017, with a written record on the same date¹, the Authority determined that:

- (a) Mr Denym Williams was unjustifiably dismissed from his employment by Custom Motor Bodies (1998) Limited (Custom Motor Bodies).
- (b) Mr Williams was awarded the following sums in remedies:

¹ [2017] NZERA Auckland 15

- (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); and
 - (ii) Reimbursement of seven weeks wages pursuant to s128 of the Act totalling \$6,160 gross.
- (c) Costs were reserved. Mr Williams was given 7 days to file a memorandum as to costs and Custom Motor Bodies was given 7 days to reply.

Costs determination

[2] On 20 January 2017, Ms Moncur filed a memorandum seeking costs on behalf of the applicant, in accordance with the Authority's current daily tariff which is \$4,500 in respect of the first day of an investigation meeting. Custom Motor Bodies failed to file a memorandum in reply despite receiving reminders from the Authority.

The Authority's daily costs tariff

[3] For matters filed in the Authority from 1 August 2016, the Authority's normal daily tariff increased from \$3,500 to \$4,500 for the first day of an investigation meeting. For each subsequent day of an investigation meeting the Authority's normal daily tariff remains at \$3,500². This matter was filed in the Authority on 14 September 2016 and therefore the new costs regime applies.

The Authority's power to award costs

[4] 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.

[5] The Full Employment Court decision in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*³ 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.

² Practice Note 2 Costs in the Employment Relations Authority

³ [2005] ERNZ 808, para.44

[6] The general principle is that costs follow the event, and there is no reason to depart from that in this case. Mr Williams was successful in his claim and should be awarded costs. Ms Moncur submitted that Mr Williams' actual costs amounted to \$5,186. A copy of Ms Moncur's invoice was provided to the Authority.

[7] The Employment Court in *Carter Holt Harvey v. Eastern Bays Independent Industrial Workers Union & Ors*⁴ 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. This approach has been affirmed by the Employment Court in *Fagotti v. Acme & Co Ltd*⁵. I adopt that approach.

[8] The normal starting point for costs in the Authority is \$4,500 for the first day. The investigation meeting took almost 1 full day. This would equate to almost \$4,500 in costs based on the Authority's normal daily tariff.

[9] Taking in to account Mr Williams' actual costs and there being no response from Custom Motor Bodies, I consider in the circumstances an award of costs of \$4,500 to be appropriate.

[10] Accordingly, I order costs of \$4,500 to be paid by Custom Motor Bodies to Mr Williams within 14 days of the date of this determination.

[11] I order Custom Motor Bodies to reimburse Mr Williams the cost of the filing fee of \$71.56 within 14 days of this determination.

Anna Fitzgibbon
Member of the Employment Relations Authority

⁴ [2011] NZEmpC 13

⁵ [2015] NZEmpC 135