

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Tania Paterson (Applicant)

**AND** Max G Limited t/a  
New World Remuera (Respondent)

**REPRESENTATIVES** Nicholas Carter, Counsel for Applicant  
Paul Tremewan, Advocate for Respondent

**MEMBER OF AUTHORITY** R A Monaghan

**MEMORANDA RECEIVED** 8 and 18 December 2006

**DATE OF DETERMINATION** 20 December 2006

**DETERMINATION OF THE AUTHORITY ON COSTS**

[ 1] In a determination dated 15 November 2006 I found Ms Paterson was unjustifiably dismissed, and awarded various remedies. Costs were reserved, and the parties have submitted memoranda on the matter.

[ 2] Counsel for Ms Paterson sought a contribution of \$4,000 to Ms Paterson's costs. He cited total costs of \$6,543.31, part of which attracted a grant of legal aid. He did not cite any legal authorities in support of his position.

[ 3] The advocate for Max G Limited relied on the judgment of the Court of Appeal in **Binnie v Pacific Health Limited**<sup>1</sup>, but the applicable authority in respect of the Employment Relations Authority is the decision of a full court of the Employment Court in **PBO Limited (formerly Rush Security Limited) v da Cruz**.<sup>2</sup> The relevant passage reads:

- “[44] The Authority ... has ... held to some basic tenets when considering costs. These include:
- . There is a discretion as to whether costs would be awarded and what amount.
  - . The discretion is to be exercised in accordance with principle and not arbitrarily.
  - . 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 exercised on a case by case basis.
  - . Costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct although conduct which increased 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 will be taken into account.

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<sup>1</sup> [2002] 1 ERNZ 438

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

- . 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.

[45] We hold that these principles are appropriate to the Authority and consistent with its functions and powers. They do not limit its discretion and proper consideration of them should ensure that each case is considered in the light of its own circumstances. ... the Authority is not bound by the **Binnie** ... principles.

[46] We find there is nothing wrong in principle with the Authority's tariff-based approach so long as it is not applied in a rigid manner without regard to the particular characteristics of the case."

[ 4] Here the investigation meeting took half a day and the legal issues were not complex. The factual matrix was not complex either, although the emotional interaction between Mr Barkla and Ms Paterson clouded matters on occasion. In those circumstances awards in favour of the successful party tend to cluster in a range of \$1,000 - \$2,000.

[ 5] As the successful party Ms Paterson is entitled to a contribution to her costs. Taking into account the factors just listed, Max G Limited is ordered to contribute to Ms Paterson's costs in the sum of \$1,500.

**R A Monaghan**  
**Member of Employment Relations Authority**