

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** David Ernest Watson (Applicant)

**AND** New Zealand Electrical Traders Limited t/a Bray Switchgear  
(Respondent)

**REPRESENTATIVES** Danny Jacobson, for Applicant  
Bill Nabney, for Respondent

**MEMBER OF AUTHORITY** Vicki Campbell

**INVESTIGATION MEETING** 30 May 2006

**SUBMISSIONS RECEIVED** 4 July 2006 from Applicant  
5 July 2006 from Respondent

**DATE OF DETERMINATION** 12 July 2006

**DETERMINATION OF THE AUTHORITY ON COSTS**

[1] In my determination dated 23 June 2006 I found that Mr Watson had been unjustifiably dismissed from his employment with New Zealand Electrical Traders Limited t/a Bray Switchgear and awarded him various remedies. I invited the parties to resolve the question of costs between them. They have been unable to do so. Both representatives have filed memoranda to assist the Authority in the exercise of its discretion.

[2] There is nothing in this case to derogate from the principle that costs follow the event and that the successful applicant should receive a contribution to his reasonably incurred costs.

[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*, unreported, AC28/06, 12 May 2006, Colgan CJ, Travis and Shaw JJ):

- There is a discretion as to whether costs should 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 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] It was said in *Harwod v Next Homes Limited*, unreported AC70/03, 19 December 2003, Travis J, and *Graham v Airways Corporation of New Zealand Ltd*, unreported, AA39/04, 28 January 2004, Member Dumbleton, that average awards of costs fall between \$1,000 and \$1,500 for a one-day investigation meeting by the Authority. There was also agreement in those decisions of a recent trend towards a higher figure of between \$2,000 and \$3,000.

[5] The hearing took one day and was not a complex matter. Mr Jacobson, on behalf of the applicant had made two calderbank offers to settle the matter prior to the investigation meeting taking place. The first calderbank offer was made on 21 February 2006, and the second offer on the eve of the investigation meeting. I am satisfied the first offer was reasonable and provided a reasonable period of time during which time the respondent could weigh up all the factors and make an informed decision whether to accept the offer or not. At the time the initial offer was made no work had been completed by the parties in preparation for the investigation meeting.

[6] I have considered the submissions made on behalf of the parties, including the information regarding the calderbank offers and I am satisfied that the discretion under clause 15 of Schedule 2 of the Act ought to be exercised in favour of Mr Watson. New Zealand Electrical Traders Limited t/a Bray Switchgear is required to pay to Mr Watson the sum of \$2,500 as a reasonable contribution to costs given the subject of the investigation and the duration of the investigation meeting. An order is made accordingly.

Vicki Campbell  
Member of Employment Relations Authority