

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 251A/08
5096180

BETWEEN	EASTERN BAY INDEPENDENT INDUSTRIAL WORKERS UNION Applicant
AND	NORSKE SKOGG TASMAN LIMITED Respondent

Member of Authority: Vicki Campbell

Representatives: Lou Yukich for Applicant
Kylie Dunn for Respondent

Submissions Received: 29 August 2008 from Applicant
12 August 2008 Respondent

Determination: 24 September 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 16 July 2008 I held that through its Collective Employment Agreement Norske Skogg Tasman Limited (NST) meets the minimum requirement to provide four weeks annual leave to all its employees.

[2] I reserved the question of costs and invited the parties to resolve the matter between them. They have been unable to do so and I am now in receipt of memorandum from the parties.

[3] I have considered the submissions made by the parties and I am satisfied that the discretion under clause 15 of Schedule 2 of the Act ought to be exercised in favour of NST.

[4] 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.

[5] The matter was important to both parties as the outcome, if determined in favour of Eastern Bay Independent Industrial Workers Union (EBIIWU) would have had a significant financial impact on NST.

[6] However, NST has not provided me with any information as to the actual costs incurred. I am therefore unable to assess whether the costs incurred by NST were reasonable or not.

[7] EBIIWU submits that an appropriate contribution to NST's costs would be \$500.

[8] NST seeks a contribution of \$1,500 plus disbursements of \$467.50. The parties prepared witness statements and submissions for a hearing which lasted less than half a day. Following the investigation meeting I requested further submissions from the parties following the publication of the Court of Appeal's decision in *New Zealand Tramways and Public Transport Employees Union Inc & Anor v Transportation Auckland Corporation* [2008] NZCA 159.

Eastern Bay Independent Industrial Workers Union is orderd to pay to Norske Skogg Tasman Limited the sum of \$750.00 plus \$467.50 disbursements.

Vicki Campbell
Member of Employment Relations Authority