

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 282A/10  
5291281

BETWEEN EASTERN BAY  
INDEPENDENT INDUSTRIAL  
WORKERS UNION INC  
First Applicant

J MOENGAROA, K OHLSON,  
D MOKOMOKO, B POMARE,  
G TAIT  
Second Applicants

AND CARTER HOLT HARVEY  
LIMITED  
Respondent

Member of Authority: Dzintra King

Submissions received: 26 July 2010 from Applicants  
11 August 2010 from Respondent

Determination: 23 August 2010

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] The second applicants were successful in their personal grievance claim. The parties were to attempt to resolve the matter of costs. Unfortunately, there has been no response to a letter sent by the applicants' counsel to the respondent. Costs not having been resolved, it now falls to the Authority to determine the matter.

[2] Prior to the substantive hearing the applicants applied for interim reinstatement, which was declined. The respondent seeks costs on that application. The applicants accept that costs are payable.

[3] The applicants seek an award of costs and disbursement for the substantive hearing. They submit that a substantial contribution well in excess of the normal tariff approach is appropriate.

[4] The criteria for awards of costs are set out in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

[5] The key principles are that costs will generally follow the event, awards will be modest, it is open to the Authority to consider whether any or all of a party's costs are unnecessary or unreasonable and costs are frequently judged against a notional daily rate.

[6] The daily rate can be varied depending upon the circumstances of the case and the tariff based approach should not be applied in a rigid manner. Awards should reflect the preparation required in a particularly complex matter and an award should not be illusory.

[7] The applicants say that there are a number of factors supporting a substantial award of costs. They were ultimately successful in their claims and there were a number of issues to be considered. The preparation required to ensure the investigation meeting was as efficient as possible and was extensive. Dealing with the issues required the analysis of extensive documentation.

[8] The applicants also submit that the respondent's failure to respond to their correspondence regarding settling costs has resulted in the need to incur additional legal costs in drafting the costs' memorandum.

[9] The applicants' legal costs are around \$39,500 excluding GST and disbursements. The applicants and the respondent both used two counsel, an indication that both the applicants and the respondent saw this as a complex matter requiring substantial input from counsel.

[10] The matter was complex, there was extensive documentation and there were five applicants. I was greatly assisted by the well prepared evidence and documentation from both applicants and the respondent.

[11] Given the complexity of the matter and the extensive documentation the fee charged is reasonable.

[12] The applicants seek an award of \$21,000 plus GST and disbursements of \$890. This constitutes a full award of \$26,000 discounted by \$5,000 for the interim hearing.

[13] In the alternative, they submit that a tariff of \$5,000 per day is appropriate and that the hearing should be treated as a five day matter. On that basis they seek payment of \$20,000 plus GST, being a full award of \$25,000 less \$5,000 for the interim hearing.

[14] The respondent accepts that the second applicants are entitled to a costs award but that there is no reason to depart from the \$3,000 a day tariff and that the matter took four days. The award should therefore be \$12,000, discounted by \$3,000 for the interim matter.

[15] Given the complexity of this case, and the extent of the preparation required, an award higher than that which would normally be given, is appropriate. The respondent is to pay the applicants the sum of \$21,000.

[16] The applicant is to pay the respondent the sum of \$21,000 in costs. In accordance with *Assor v Futuna Trust Ltd* 28/8/03, P Stapp (member), WA93A/03; *Albert v Valley-Guide Farming Trust* 1/9/03, D Asher (member), WA96A/03; and *Entwisle v Dunedin CC* [2002] 2 ERNZ 23, I will not allow GST as part of the costs award.

Dzintra King

Member of the Employment Relations Authority