

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 108/10  
5142038

BETWEEN NATIONAL DISTRIBUTION  
UNION  
First Applicant

AND

KATHLEEN HEIHEI, VIVIAN  
MACDONALD, JOHNNY  
SNELL, DENNIS O'NEILL,  
SILE AHOLELEI, LOIS  
KURRY

Second Applicants

AND THE WAREHOUSE LIMITED  
First Respondent

AND

THE WAREHOUSE PEOPLES  
UNION INC

Second Respondent

Member of Authority: Dzintra King

Determination: 9 March 2010

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] The first respondent has endeavoured to resolve the issue of costs with the first applicant but received no response. It seeks \$4,425.00 excluding GST, being the actual costs, and disbursements of \$100.

[2] The first respondent was successful in defending the issue of whether the first applicant had standing to bring the application.

[3] The first respondent says that while there is a tariff approach the Authority has discretion to award greater or lesser amounts.

[4] In *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808 the full court of the Employment Court confirmed that each case was to be considered on its merits and the tariff approach was not to be applied rigidly.

[5] If the conduct of a party has increased costs unnecessarily that can be taken into account in making an award. The first respondent says the conduct of the first applicant unnecessarily increased the litigation costs.

[6] The first applicant had been found not to have standing in proceedings previously determined by the Authority but chose to advance an identical argument to the one that had been found to be unsuccessful. The matter could have been brought in the names of the second applicants only.

[7] The first respondent says this is the second time it has had to argue the same issue. It had properly acknowledged that the applicant could be correctly brought by the second applicants.

[8] The first applicant says that as the point had already been argued there could not be any significant additional costs.

[9] There was no investigation meeting, just an exchange of submissions.

[10] The first applicant says that costs should not be awarded until the litigation is resolved in its entirety.

[11] At this stage no further action has been taking regarding this matter. I therefore will make a costs order.

[12] Given that this matter was the subject of a hearing, and that it did involve the same issues as previously determined by the Authority, the actual costs sought are too high.

[13] The first applicant is to pay the first respondent the sum of \$1,500 plus the \$100 disbursements.

Dzintra King

Member of the Employment Relations Authority