

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 174A/10
5129488
5129492

BETWEEN

ROWYNE PETERS
Applicant in 5129488

WIREMU WAIKARI-RANGI
Applicant in 5129492

AND

TE ROOPU WAIORA TRUST
INCORPORATED
Respondent

Member of Authority: Dzintra King

Representatives: John Burley, Counsel for Applicants
Richard Harrison, Counsel for Respondent

Memoranda Received: 26 July 2010 and 27 August From Applicants
6 August 2010 from Respondent

Determination: 22 September 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] The applicant, Mr Rowyne Peters and Mr Wiremu Waikari-Rangi, were successful in their personal grievance claims. The parties have been unable to resolve the matter of costs.

[2] The actual costs incurred by the applicants were \$13,930.00 at an hourly rate of \$275. The applicants seek an award between \$10,000 to \$12,000.

[3] Mr Burley noted that the applicants would be prepared to consider recovery of costs on a time payment basis.

[4] The hearing initially took a day. A further hearing was required to interview three witnesses. This was of short duration.

[5] Mr Harrison submitted that the matter was of importance to the Trust and that its financial situation and ability to continue to operate should be taken into account. It is apparent that the Trust's financial status and viability have also been taken into consideration by the applicants, given their proposal to consider time payment.

[6] Mr Harrison provided statements of the Trust's financial position. The money held by the Trust is tagged funding, held on trust and unable to be used for other purposes. The Trust is a community based organisation.

[7] Mr Harrison noted that in order to be able to pay the remedies awarded the Trust would have to agree a schedule of payments over a period of time and the Trust is under financial pressure.

[8] Mr Harrison submitted that in the circumstances costs should lie where they fall.

[9] The principles applicable to an award of costs in the Authority have been set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808. The Full Court set out a number of principles including that costs generally follow the event, are frequently judged against a notional daily rate and that awards will be modest.

[10] It is also important to consider the ability to pay.

[11] It is fair that the applicants have some contribution to their costs. However, given the financial state of the respondent these will be less than what I would otherwise have ordered.

[12] The respondent is to pay to the applicants the sum of \$1,000.

Dzintra King

Member of the Employment Relations Authority

