

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2011] NZERA Auckland 462
5334192**

BETWEEN SIALE TALAKAI
Applicant

AND ALBANY FOOD WAREHOUSE
LIMITED T/A ALBANY
PAK'n'SAVE
Respondent

Member of Authority: Eleanor Robinson

Representatives: Applicant in person
Bridget Smith, Counsel for Respondent

Costs Submissions None from Applicant
3 October 2011 from Respondent

Determination: 25 October 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 8 September 2011 ([2011] NZERA Auckland 387), the Authority found that the Applicant, Mr Siale Talakai, had not been unjustifiably dismissed, nor had Mr Talakai been unjustifiably disadvantaged in his employment, by the Respondent, Albany Food Warehouse Limited (“AFW”)

[2] In that determination costs were reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately they have been unable to do so, and AFW has filed a submission in respect of costs.

[3] The matter occupied approximately half a day of hearing time. Ms Smith on behalf of AFW submits that AFW, which has incurred legal fees in excess of \$7,000.00 including GST and disbursements, is seeking a contribution of \$1,500.00 plus GST and disbursements towards the legal costs.

[4] Ms Smith in support of the level of the claim by AFW, submitted as significant factors for the consideration of the Authority that:

- The Respondent was wholly successful in the matter;
- That the Authority in the determination of the substantive matter had made reference to the Applicant's adverse conduct in the matters leading to the termination of his employment; and
- That the costs had been reasonably incurred.

Principles

[5] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 which states:

15 Power to award costs

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.*
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.*

[6] Costs are at the discretion of the Authority, as observed by the current Chief Judge Colgan in *NZ Automobile Association Inc v McKay*¹.

[7] The matter involved half a day of meeting time. The principles applicable to awards of costs in the Authority are well established. It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*² that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*³ at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.

[8] A tariff based approach is that usually adopted by the Authority, which has the discretion to raise or lower the tariff, depending on the circumstances. For a 1 day Investigation Meeting this would normally equate to an award of \$1,500.00.

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2001] ERNZ 305

Determination

[9] For a case of this kind \$1,500.00 is accepted as the notional daily rate. Accordingly, Mr Talakai is ordered to pay AFW \$1,500.00 costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

[10] Ms Smith for AFW has claimed disbursements, but has not quantified these or provided evidence of what constitutes these disbursements. Without evidence of actual disbursements, I am unable to assess whether such costs have been properly incurred, and consequently cannot award an amount in respect of disbursements.

Eleanor Robinson
Member of the Employment Relations Authority