

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2012] NZERA Christchurch 146
5359357

BETWEEN ROSAURO GAPUZAN
Applicant

A N D PRATT & WHITNEY AIR NEW
ZEALAND t/a CHRISTCHURCH
ENGINE CENTRE
Respondent

Member of Authority: David Appleton

Representatives: Applicant in Person
Geoff Carter, Counsel for Respondent

Submissions Received 19 June 2012 from the Applicant
9 July 2012 from the Respondent

Date of Determination: 16 July 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 12 June 2012 the Authority found that the applicant's claims for a compliance order and for breach of good faith failed. Costs were reserved.

[2] Mr Gapuzan wrote to the Authority on 19 June 2012 asking for costs to be waived, citing medical and financial problems. He stated that he was already in debt and was unable to contribute to the costs of the proceedings. He produced no evidence of his indebtedness or other financial commitments and, when asked by the Authority if he wished to comment upon the costs submissions of the respondent, wrote to say that he had nothing to add to his letter of 19 June.

[3] The respondent states that it has incurred over \$11,000 (excluding GST) of costs in defending the matter and seeks a contribution of \$3,500, the current usual

daily tariff. The Investigation Meeting lasted from 9.30 am until 3.00 pm, with short breaks only.

[4] I agree with counsel for the respondent that there is no good reason to depart from the principles of *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808. The subject matter of the claim was slightly unusual, but not legally or factually complex. Costs should follow the event, and so Mr Gapuzan should pay a contribution to the respondent's costs.

[5] The only material issue that bears further consideration is Mr Gapuzan's pleaded impecuniosity. Whilst no evidence was produced to the Authority of Mr Gapuzan's inability to pay, I do accept that he is likely to be in financial difficulties in light of his failure to have secured work. I believe that the Authority's duty to act in equity and good conscience obliges me to take that likelihood into account.

[6] However, I do not agree that Mr Gapuzan's obligation to contribute towards the costs of the respondent should be waived completely. Mr Gapuzan failed in all his claims, and while his claims were not doomed to fail from the start, they were legally weak in my view.

[7] Taking into account all these factors, I believe that a contribution of \$2,000 is appropriate. Mr Gapuzan is therefore ordered to pay this sum to the respondent.

David Appleton
Member of the Employment Relations Authority