IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

[2012] NZERA Auckland 32
5330781

	BETWEEN	NZ AMALGAMATED ENGINEERING, PRINTING & MAUFACTURING UNION INC Applicant
	AND	CHUBB NEW ZEALAND LIMITED Respondent

Member of Authority:	Eleanor Robinson
Representatives:	Anne-Marie McInally, Counsel for Applicant Jo Phipps, Advocate for Respondent
Costs Submissions	23 December 2011 from Applicant 18 January 2012from Respondent
Determination:	20th January 2012

COSTS DETERMINATION OF THE AUTHORITY

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[1] In a determination dated 13 December 2011 ([2011] NZERA Auckland 527), the Authority found in the favour of the Applicant, the NZ Amalgamated Engineering, Printing and Manufacturing Union ("EPMU") in a dispute about the interpretation of a clause in a collective agreement ("the Collective Agreement") into which the EPMU had entered with the Respondent, Chubb New Zealand Limited ("Chubb").

[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 both parties have filed submission in respect of costs.

[3] The matter was decided "on the papers" and as such involved no meeting time; however Chubb had filed affidavit evidence and both parties had filed submissions about the interpretation of the Collective Agreement.

Applicant's Submissions

[4] Ms McInally for EPMU refers to the leading Full Court judgement in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*[1] and submits that the principles identified in that case are relevant to this matter.

[5] Ms McInally, referring to those principles, submits that costs normally follow the event, and that the successful party should not be deprived of costs in the absence of seriously blameworthy conduct in provoking, conducting or prolonging the litigation, citing *Savage v Unlimited Architecture Ltd*[2]

[6] Ms McInally submits that the normal daily tariff rate of $3,000.00 be revised down to reflect the brevity of the submissions and the fact that the matter was not legally complex, and is seeking $700.00 as a contribution towards EPMU's costs.

Respondent's Submissions

[7] Ms Phipps for Chubb acknowledges the principles in *PBO Limited (formerly Rush Security Ltd) v Da Cruz:* as being relevant to this matter.

[8] Ms Phipps submits that costs will generally be allowed to lie where they fall if the matter before the Court concerns a genuine dispute over the interpretation of an employment agreement, citing *Quality Service Enterprises Ltd v Huriwai*[3] in which the Court stated:

> *No doubt the rationale for costs being allowed to lie where they fall in disputes is that both parties need the services of the employment institutions to assist in resolving genuine disputes over agreements in which they are parties ….*

Determination

[9] The Authority finds that this was a genuine dispute about the interpretation, application or operation of the provisions of the Collective Agreement and whether employees who had attained 10 years' continuous service but had yet to attain 15 years' continuous service when the 2007-08 Collective Agreement came into force on 24 September 2007 were entitled to the one week special holiday provided by clause 20 of the 2007-08 Collective Agreement.

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[1] [2005] ERNZ 808
[2] [1999] 2 ERNZ 40 at 51
[3] [2005] EM

[10] It seems reasonable to conclude that this dispute could not have been informally resolved, given the not insignificant cost to Chubb which was involved, and the definite views on the matter of the parties. I consider that both parties will to some extent have benefitted from having a definite ruling on the matter.

[11] The matter was determined by the Authority on the papers by way of timetabled submissions. The parties were not put to the expense of attending at an investigation meeting. In all the circumstances, I am not persuaded that this is a matter in which costs should be awarded.

[12] I order that costs are to lie where they fall.

Eleanor Robinson
Member of the Employment Relations Authority