

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2011] NZERA Auckland 213
5354352**

BETWEEN	FUGRO PMS PTY LTD & PAVEMENT SERVICES LTD Applicant
AND	BRYCE TINKLER Respondent

Member of Authority:	Eleanor Robinson
Costs Submissions	5 June 2012 from Applicant None from Respondent
Determination:	21 June 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination [2012] NZERA Auckland 151 the Authority ordered the removal of a joint Application for a Compliance Order to the Employment Court. The removal had been instigated by the Respondent on 9 March 2012 and consented to by the Applicant on 24 April 2012.

[2] At paragraph [12] of that determination, I reserved costs, giving each party 28 days from the date of Determination to file and serve a memorandum of the costs on the other, with the other party having 14 days in which to file and serve a Memorandum in Reply.

[3] The Applicant, Fugro PMS Pty Ltd & Pavement Management Services, (Fugro), has filed a memorandum of costs on the basis that it has been put to the expense of making the application given the nature of the preliminary matter and the appeal of the preliminary decision of the Authority to the Employment Court.

[4] Fugro claims that it is entitled to costs for the Removal Order, despite having consented to the application.

[5] Fugro is seeking a contribution towards costs of \$906.80 against the actual costs of \$1,133.50, plus \$153.33 for the filing fee.

Principles

[6] 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.*

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

[8] The principles and the approach adopted by the Authority on which an award of costs is made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*².

[9] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*³ that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*⁴ at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.

Determination

[10] In reaching my decision as to whether costs should be awarded in this matter, and having had regard to the principles set out in *Da Cruz* I note that Fugro’s consent to the Removal application was provided on the basis of the behaviour of Mr Tinkler. I note that this behaviour included Mr Tinkler having agreed on 21 December 2011 to have the application by Fugro for a Compliance Order heard on the papers, despite having filed a challenge to the preliminary matter seeking a full hearing *de novo* in the Employment Court the preceding day.

[11] In the circumstances I think it appropriate to make a costs award to Fugro.

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2005] 1 ERNZ 808

⁴ [2001] ERNZ 305

[12] Accordingly, Mr Tinkler is ordered to pay Fugro \$900.00 costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

[13] Mr Tinkler is also ordered to reimburse the filing fee of \$153.33 to Fugro.

Eleanor Robinson
Member of the Employment Relations Authority