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**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CRISTCHURCH**

[2012] NZERA Christchurch 166  
5331831

BETWEEN                      JUNE ISABELLE HYNES  
   Applicant  
  
AND                                THE HOME CENTRE LTD t/a  
   MARLBOROUGH MITRE 10  
   MEGA  
   Respondent

Member of Authority:        M B Loftus  
  
Representatives:              Stephanie Moses, Counsel for the Applicant  
   Peter Zwart, Advocate for the Respondent  
  
Submissions Received:      12 July 2012 from the Applicant  
   30 July 2012 from the Respondent  
  
Determination:                13 August 2012

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     In a determination dated 13 June 2012 I rejected Ms Hynes claim she had been unjustifiably dismissed by the respondent, the Home Centre Ltd. Costs were reserved and the Home Centre, as the successful party, now seeks a contribution toward those it incurred.

[2]     It is well accepted costs normally follow the event unless there is a compelling argument to the contrary. Normally the Authority will use a daily tariff approach when assessing the amount (refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808). The normal starting point is \$3,500 per day and from there adjustment may be made depending on the circumstances.

[3]     The hearing took a day and the Home Centre seeks a contribution in accordance with the formula described above, along with an additional amount for its

advocate's travel expenses from Christchurch. The additional amount is \$610.00 and the total \$4,110.

[4] Ms Hynes replies with a request that no award be made. Due to health concerns she has been unable to work full time and her condition entitles her to a partial sickness benefit. She supports her submission with documentary evidence which shows her financial situation is such she is incapable of making a payment should it be ordered.

[5] While costs normally follow the event an award is not an absolute or foregone conclusion. As said earlier, \$3,500 a day is a starting point and adjustment may be made depending on the circumstances. Inability to pay is one circumstance that should be considered.

[6] Impecuniosity is often pleaded but seldom do I see the claim supported as Ms Hynes has done. The documentary evidence is comprehensive and clearly supports Ms Hynes' claim she would be unable to pay. There is no sense in making an order that can not be complied with, especially when the dismissal was for redundancy – a no fault situation to which Ms Hynes could not have contributed.

[7] I therefore make no order against Ms Hynes and conclude that costs should lie where they fall.

M B Loftus  
Member of the Employment Relations Authority