

BETWEEN VERONICA KLOETEN
Applicant

AND COMBINED TANNING
SUPPLIES LIMITED
Respondent

Member of Authority: Eleanor Robinson

Representatives: Geoff Downey, Advocate for Applicant
Ritesh Chandra, Advocate for Respondent

Submissions received: 27 January 2012 from Applicant
No submissions from Respondent

Determination: 27 February 2012

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

1. In a determination dated 13 January 2012 ([2012] NZERA Auckland 9), the Authority found that Ms Kloeten had been unjustifiably dismissed and unjustifiably disadvantaged in her employment by the Respondent, Combined Tanning Supplies Limited (“CTSL”).
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 Mr Downey for Ms Kloeten has filed submissions in respect of costs.
3. Mr Downey for Ms Kloeten is seeking \$4,000.00 as a contribution towards the actual costs which Mr Downey submits were in excess of an amount triple to that being claimed as a contribution.

Principles

4. 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.*

5. Costs are at the discretion of the Authority, as observed by the current Chief Judge Colgan in *NZ Automobile Association Inc v McKay*¹.
6. 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.
7. 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 half day Investigation Meeting this would normally equate to an award of \$1,500.00.

Determination

8. For a case of this kind \$1,500.00 is accepted as half the notional daily rate. Accordingly, CTSL is ordered to pay Ms Kloeten \$1,500.00 costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

Eleanor Robinson
Member of the Employment Relations Authority

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2001] ERNZ 305