

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 445
5394782

BETWEEN MARITIME UNION OF
NEW ZEALAND
INCORPORATED
Applicant

AND PORTS OF AUCKLAND
LIMITED
Respondent

Member of Authority: K J Anderson

Representatives: S Mitchell, Counsel for Applicant
R McIlraith and K Dunn, Counsel for Respondent

Submissions received: 29 October 2012 from the Respondent
Nil from the Applicant

Determination: 10 December 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 5th October 2012¹ the Maritime Union of New Zealand Incorporated (the Union) was unsuccessful with its claims, with the Authority finding in favour of the respondent, Ports of Auckland Limited (POAL). The parties were invited to resolve the issue of costs and while counsel for POAL wrote to counsel for the Union on 18th October 2012, seeking a contribution to costs, there has been no response received; nor have any submissions on costs been received from the Union, by the Authority.

[2] The submissions for POAL acknowledge the tariff based approach of the Authority and the principles set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*.² Given that the current approach of the Authority is to, usually, award the

¹ [2012] NZERA Auckland 345

² [2005] ERNZ 808

sum of \$3,500 for a one day hearing, POAL submits that this sum would an appropriate contribution by the Union towards the costs incurred by the company.

[3] While the submissions for POAL allude to the investigation meeting lasting “most of a day” the notes of the Authority show that the hearing time was much less than this. The abridged hearing time was a result of the advocates and the Authority member agreeing to an efficient process, whereby the enquiries of the Authority and cross-examination of the respective witnesses was kept to a minimum; thereby allowing the matters at issue to be largely determined on the papers, along with the respective submissions of the parties. Nonetheless, it is accepted that both parties would have spent some significant time preparing for the investigation meeting. And while POAL has not presented any details of the costs incurred, it can be taken to be within the general knowledge of the Authority that the costs incurred would be substantially in excess of the award being sought.

Determination

[4] While the investigation meeting took somewhat less than a day, I accept that given the preparation that was required for POAL to effectively prepare its defence to the claims of the Union, it is appropriate to make an award of costs as if the investigation meeting had lasted a full day

[5] Taking into account the overall circumstances and exercising the discretion of the Authority pursuant clause 15 of Schedule 2 of the Act, the Maritime Union of New Zealand Incorporated is ordered to pay to Ports of Auckland Limited the sum of \$3,500.00.

K J Anderson
Member of the Employment Relations Authority