

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 134  
5359546

BETWEEN

ASSOCIATION OF ALLIED  
PROFESSIONAL AND  
EXECUTIVE EMPLOYEES  
INCORPORATED  
Applicant

A N D

BAY OF PLENTY DISTRICT  
HEALTH BOARD  
Respondent

Member of Authority: Alastair Dumbleton

Memoranda Received: 15 and 28 February 2013

Date of Determination: 19 April 2013

---

**COSTS DETERMINATION OF THE AUTHORITY**

---

- A. The respondent is ordered to pay \$7,000 as a contribution to the legal costs of the applicant.**
- B. The Authority's substantive determination of 15 January 2013 is stayed until further order of the Authority or Employment Court.**

**Application for costs**

[1] In its determination dated 15 January 2013 – [2013] NZERA Auckland 13 – the Authority resolved an employment relationship problem in favour of the Association of Allied Professional and Executive Employees Inc (APEX), a union whose members are employed as Medical Radiation Technicians by the Bay of Plenty District Health Board (DHB) at Tauranga Hospital.

[2] To resolve the problem, the Authority made a finding that a particular provision of the collective agreement under which APEX members were employed had been agreed to in bargaining between the parties. The Authority also gave a declaration as to the meaning and application of the disputed provision.

[3] A further declaration sought by APEX was given that the technicians had been underpaid for periods when they had been called back to work. As a consequence they were entitled to recover arrears back to 1 March 2007.

[4] In relation to costs the Authority suggested the parties might appropriately bear their own costs but the question was reserved for application to be made and replied to by them, if they wished.

[5] Memoranda have been received from counsel Mr Manning for APEX and Mr Beech for the DHB.

[6] Both counsel have referred in their submissions to the leading case from the Employment Court on costs in the Authority: *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808.

[7] APEX seeks an order for costs of \$10,000 as a contribution to fees of \$29,709 (including GST) incurred in retaining Mr Manning. The filing fee of \$71.56 is also sought.

[8] The costs sought by APEX have been assessed by raising the Authority's daily tariff from its current \$3,500 to \$5,000, and by applying that amount to the two days of investigation meeting time.

[9] In reply for the DHB, counsel Mr Beech seeks an order that costs lie where they fall but submits that if the Authority is minded to make any award it should be less than \$10,000.

[10] I consider now this case is not one of those in the less usual category where the parties should bear their own costs. It is a relatively normal kind of case where, in principle, costs should follow the event or outcome, which was that APEX succeeded with its claims.

[11] This was less of a 'test' case and more of one where there had been some shift in focus from a legal dispute about the interpretation of a provision of the collective

agreement to a factual dispute about the terms and conditions which had been agreed to in bargaining by the parties. Although the disputed clause was not drafted in a way that made its meaning immediately apparent to a reader, by concentrating on the provision's words and construction the intended meaning could eventually be deduced clearly enough.

[12] For those reasons I see no need to raise the daily tariff often applied by the Authority when fixing costs. Awards of modest costs will generally accord with the principles of *Da Cruz*. For the two days of hearing time I fix costs of \$7,000, which sum is to be paid by the DHB to APEX. In addition, the union is entitled to recover the filing fee of \$71.56 from the employer.

[13] This order is made by the Authority pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

#### **Stay of Authority's substantive determination**

[14] Upon the application of the DHB, not opposed by APEX, pending the disposal of the challenge to it made in the Employment Court, or until further order, the Authority's determination of 15 January 2013 is stayed. Application to vary or discharge this stay may be made by APEX or the DHB on not less than five working days' notice.

A Dumbleton  
**Member of the Employment Relations Authority**