

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 182
5398638

BETWEEN BILL(SEE)TOH
 Applicant

A N D LINCOLN PARK MARKETS
 LIMITED t/a THE MIGHTY
 DOLLAR SHOP
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Applicant in person
 Garry Pollak, Counsel for Respondent

Submissions Received: 23 April 2013 from Respondent
 No submissions received from Applicant

Date of Determination: 10 May 2013

COSTS DETERMINATION OF THE AUTHORITY

A. Mr Bill (See) Toh is ordered to contribute \$4000 towards Lincoln Park Markets Limited's legal costs.

[1] In a substantive determination dated 19 April 2013¹ the Authority dismissed Mr Toh's employment relationship problem. A timetable was set for costs to be dealt with by an exchange of memoranda. Mr Pollak for the respondent, Lincoln Park Markets Limited (Lincoln Park) filed a memorandum as to costs which was served on the applicant, Mr Toh. Mr Toh has not filed a memorandum in response.

[2] The Authority's power to award costs arises from Schedule 2, clause 15 of the Employment Relations Act 2000 (the Act). This confers a wide discretion on the Authority to award costs, on a principled basis.

¹ [2013] NZERA Auckland 138

[3] The principles guiding the Authority's approach to costs are set out by the Full Employment Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808. Those principles are so well recognised I do not need to restate them.

[4] The general principle is that costs follow the event, and I see no reason to depart from that in this case. Accordingly, Lincoln Park as the successful party is entitled to a contribution towards its legal costs.

[5] The Employment Court in *Carter Holt Harvey v. Eastern Bays Independent Industrial Workers Union & Ors*² observed that a notional daily tariff approach, which was to be adjusted in a principled way, was best suited to the Authority's unique jurisdiction. I adopt that approach.

[6] Mr Pollak for Lincoln Park submits that the starting point in assessing an appropriate costs award is the daily notional rate which is \$3500 plus GST. The normal starting point for costs in the Authority is \$3500 per day, *Fifita (aka Bloomfield) v. Dunedin Casinos Limited*³.

[7] This matter involved an investigation meeting of almost one full day. I have adopted a notional daily tariff of \$3500 as my starting point and now consider whether there are any factors which would warrant adjusting that notional tariff.

[8] Mr Pollak seeks *an uplift* in the daily rate because of the way in which Mr Toh conducted himself including *deliberately not providing information, unless directed by the Authority*. Mr Pollak submits Mr Toh should make a contribution of \$6,037.50 (including GST) being slightly less than actual costs incurred by Lincoln Park.

[9] I am prepared to take this factor into account in assessing costs. I conclude the notional daily tariff should be increased by \$500. An appropriate award of costs in this matter is \$4000.

Anna Fitzgibbon
Member of the Employment Relations Authority

² [2011] NZEmpC 13

³ [2012] NZEA Christchurch at p.2019