IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

[2013] NZERA Christchurch 188
5389254

	BETWEEN	TERTIARY EDUCATION UNION First Applicant
		LAWRIE GRAY AND THIRTEEN OTHERS Second Applicants
	A N D	VICE CHANCELLOR OF LINCOLN UNIVERSITY Respondent

Member of Authority:	M B Loftus
Representatives:	Peter Cranney, Counsel for Applicants Raewyn Gibson, Advocate for Respondent
Submissions Received:	6 September 2013 from Respondent 10 September 2013 from Applicant
Date of Determination:	10 September 2013

COSTS DETERMINATION OF THE AUTHORITY

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[1] On 3 July 2013 I issued a determination regarding a dispute over whether or not work performed in the aftermath of Christchurch's earthquakes constituted an emergency callout as provided for in a collective employment agreement between the parties. The answer, no, favoured the position taken by the respondent, Lincoln University.

[2] Costs were reserved and, as the successful party, the university now seeks a contribution toward those it incurred in defending the claim.

[3] Normally the Authority will use a daily tariff approach when addressing a costs claim (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.

[4] The investigation took approximately half a day which would, applying the above approach, mean an award in the order of $1,750. That is what the university seeks.

[5] The response is this was a dispute which was both arguable and conducted responsibly. Applying *Hansells (NZ) Ltd v Lili Ma* (unreported) EC Auckland, AC 53A/07, 1 November 2007 costs should lie where they fall.

[6] *Hansells v Ma* is one of a line of authorities supporting the proposition parties to a collective instrument should be entitled to ask the Authority investigate the meaning of disputed provisions or determine issues of application or operation without fear of a consequential award of costs.

[7] This was a dispute and notwithstanding the result I do not accept, as the university contends, the claim had little prospect of success. If nothing else I note the word *earthquake* was included as an example of what constituted an emergency and the evidence suggested that undoubtedly raised employee expectations over the clauses applicability.

[8] Having considered the arguments, and Court authorities in respect to such claims, I conclude costs should lie where they fall.

M B Loftus
Member of the Employment Relations Authority