

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2014] NZERA Auckland 158
5428029**

BETWEEN CAROLYN FILBRY
Applicant

AND CHIEF EXECUTIVE of
DEPARTMENT OF
CORRECTIONS
Respondent

Member of Authority: Eleanor Robinson
Representatives: Greg Bennett, Advocate for Applicant
Tara Sewell, Counsel for Respondent
Submissions received: None from Applicant
10 April 2014 from Respondent
Determination: 28 April.2014

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination [2013] NZERA Auckland 81 the Authority found that the Applicant, Ms Carolyn Filbry, had been not been unjustifiably dismissed by the Respondent, the Department of Corrections (the Department).

[2] In that determination costs were reserved in the hope that the parties would be able to settle this issue between them. Unfortunately they have been unable to do so, and the Department has filed submissions in respect of costs.

[3] This matter involved two days of an Investigation Meeting, with written submissions from the Respondent being submitted subsequent to that. Ms Sewell, on behalf of the Department, citing actual costs of \$28,187.00 (excluding GST), is seeking a contributory award of \$7,000.00 towards the actual costs.

Principles

[4] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) which states:

s. 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 Chief Judge Colgan in *NZ Automobile Association Inc v McKay*¹.

[6] The principles and the approach adopted by the Authority on which an award of costs is made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*².

[7] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*³ that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*⁴ at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.”

Determination

[8] The normal rule is that costs follow the event and the Department is entitled to a contribution to its costs.

[1] Having had regard to the principles set out in *Da Cruz*, the time taken for the Investigation Meeting, and the conduct of the parties, I consider that a contributory award towards the Department’s actual costs is reasonable.

[2] Adopting the notional daily tariff rate of the Authority as \$3,500.00, I take that as the appropriate starting point for costs.

[9] Accordingly I order Ms Filbry to contribute \$7,000.00 towards the Department’s actual 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 [2005] 1 ERNZ 808

⁴ [2001] ERNZ 305

