

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2014] NZERA Auckland 279
5427519**

BETWEEN THOMAS O'DONOGHUE
Applicant

AND ADDCOM CONTACT
SOLUTIONS LP (formerly known
as ABTC GROUP LP)
Respondent

Member of Authority: Eleanor Robinson

Representatives: Dave Vinnicombe, Advocate for Applicant
Keith Thomason for Respondent

Submissions received: 20 June 2014 from Applicant
30 June 2014 from Respondent

Determination: 2 July 2014

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination [2013] NZERA Auckland 221 the Authority found that the Applicant, Mr Thomas O'Donoghue, had been unjustifiably dismissed by the Respondent, Addcom Contact Solutions LP (Addcom).

[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 parties have filed submissions in respect of costs.

Costs

[3] This matter involved half a day of investigation meeting. Mr Vinnicombe, on behalf of Mr O'Donoghue, is seeking a contribution to costs in the sum of \$1,750.00 (plus GST).

[4] In support of his level of claim, Mr Vinnicombe submits that Mr Thomason failed to attend the original Investigation Meeting held on 17 April 2014, necessitating a new date to be set and Mr O'Donoghue having to incur additional costs as a result.

[5] Mr Thomason submits that Addcom had made an offer to settle the costs; however the offer by the Applicant had been rejected by Addcom.

Principles

[6] 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:

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.

[7] Costs are at the discretion of the Authority, as observed by Chief Judge Colgan in *NZ Automobile Association Inc v McKay*¹.

[8] 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.

[9] 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

[10] A tariff based approach is that usually adopted by the Authority, which has the discretion to raise or lower the tariff, depending on the circumstances. For a 1 day investigation meeting this would normally equate to \$3,500.00.

[11] The normal rule is that costs follow the event and having considered all of the circumstances, I can see no justification for not making the costs award to Mr O’Donoghue as the successful party in the proceedings.

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2005] 1 ERNZ 808

⁴ [2001] ERNZ 305

[12] Whilst the Respondent did not attend the initial Investigation Meeting held on 17 April 2014, I accept that this was as a result of a genuine illness and do not take it into account in setting the level of costs.

[13] Taking the notional daily tariff rate as the starting point, I find that the amount claimed in respect of costs by Mr O'Donoghue equates to half the normal daily tariff rate.

[14] Accordingly, Addcom is ordered to pay Mr O'Donoghue the sum of \$1,750.00 (including GST) as costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

Eleanor Robinson
Member of the Employment Relations Authority