

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**[2015] NZERA AUCKLAND 75  
5456959**

BETWEEN JENNY LOWE  
Applicant

AND AHI ROOFING LIMITED t/a  
FLETCHER BUILDING  
ROOFING TILE GROUP  
Respondent

Member of Authority: Eleanor Robinson

Representatives: Garry Pollak, Counsel for Applicant  
Penny Swarbrick, Counsel for Respondent

Submissions received: 11 March 2015 from Applicant  
4 March 2015 from Respondent

Determination: 13 March 2015

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] By determination [2014] NZERA Auckland 425 the Authority determined that the Applicant, Ms Jenny Lowe, had not been successful in the various claims which she had raised against the Respondent, Fletcher Building Roofing Tile Group (RTG) which included unjustifiable dismissal and disparate treatment.

[2] Costs were agreed to be deferred pending a challenge to my determination, however that challenge has been discontinued and the costs incurred as part of the Authority's process are now sought.

[3] Ms Swarbrick on behalf of RTG is seeking a contribution to costs in the amount of \$2,500.00.

[4] Mr Pollak on behalf of Ms Lowe submits that costs should lie where they fall on the basis that Ms Lowe's claims were in the nature of a contractual dispute in which costs usually lie where they fall.

[5] Mr Pollak also submits on behalf of Ms Lowe that she has limited financial resources compared to RTG.

## Costs

[6] This matter involved a one day investigation meeting.

### *Principles*

[7] 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.*

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

[9] 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*<sup>2</sup>.

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

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<sup>1</sup> [1996] 2 ERNZ 622

<sup>2</sup> [2005] 1 ERNZ 808

<sup>3</sup> [2005] 1 ERNZ 808

<sup>4</sup> [2001] ERNZ 305

## **Determination**

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

[12] The normal rule is that costs follow the event. Whilst costs are not usually awarded in a situation in which there is a genuine dispute about the interpretation, application or operation of the provisions of an employment agreement, this applies more usually in the case of a Collective Agreement in which there has arisen a genuine dispute that will affect a number of union members.

[13] I consider that the claims raised by Ms Lowe were broader than a mere interpretation and application issue, and involved a personal grievance for unjustifiable dismissal. Moreover the dispute related to matters personal to Ms Lowe rather than a group of individuals as is usually the case in a dispute about the interpretation, application or operation of the provisions of a Collective Agreement.

[14] Mr Pollak has referenced Ms Lowe's financial circumstances within the context of the costs submissions. However there is no financial information to support an argument that costs should not apply, or should be set at an amount below the normal daily tariff amount on this basis.

[15] Having considered all of the circumstances, I can see no justification for not making the costs award to RTG as the successful party in the proceedings.

[16] I order Ms Lowe to contribute \$3,500.00 towards RTG's actual costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**