

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 352  
5536628

BETWEEN

ANNA FAULLS  
Applicant

A N D

GATHER SUPERMARKET  
CHAIN LIMITED trading as  
ITALIA SQUARE  
Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Nathan Santesso, Advocate for the Applicant  
Mr Sean Aram, Director of the Respondent

Submissions : Received on 23 October 2015 from the Applicant. No  
submissions received from the Respondent.

Date of Determination: 11 November 2015

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**COSTS DETERMINATION OF  
THE EMPLOYMENT RELATIONS AUTHORITY**

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- A. Gather Supermarket Chain Limited trading as Italia Square is ordered to contribute \$3,500 towards Ms Anna Faulls' costs which are to be paid within 14 days of the date of this determination.**

**The substantive determination**

[1] In a determination of the Authority dated 19 October 2015<sup>1</sup> the Authority determined that;

- (a) Ms Faulls' dismissal by Gather Supermarket Chain Limited trading as Italia Square (Italia Square) was unjustified.

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<sup>1</sup> [2015] NZERA Auckland 325

- (b) Ms Faulls was awarded reimbursement of lost wages in the sum of \$6342.50, holiday pay of \$592.80 and compensation in the sum of \$6000 for hurt and humiliation suffered by her pursuant to s.123(1)(c)(i) of the Employment Relations Act 2000 (the Act).
- (c) Italia Square was ordered to pay these sums within 21 days of the date of the determination.

### **Costs determination**

[2] A memorandum of costs was filed by Mr Santesso on behalf of Ms Faulls seeking a costs award of \$3,500 being the Authority's daily tariff. Ms Faulls' actual costs were just over \$6,000.

[3] No memorandum in reply as to costs was filed on behalf of Italia Square.

### **The Authority's power to award costs**

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

[5] 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*<sup>2</sup>. In particular;

- The discretion is to be exercised in accordance with principle and not arbitrarily;
- The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority;
- Equity and good conscience is to be considered on a case by case basis;
- Costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award; and

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<sup>2</sup> [2005] 1 ERNZ 808, para.[44]

- Awards will be modest.

[6] The general principle is that costs follow the event, and I see no reason to depart from that in this case. Ms Faulls was successful in her claims and should be awarded costs.

[7] The Employment Court in *Carter Holt Harvey v. Eastern Days Independent Industrial Workers Union & Ors*<sup>3</sup> 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. This approach has been affirmed by the Employment Court recently in *Fagotti v. Acme & Co Ltd*<sup>4</sup>. I adopt that approach.

[8] The normal starting point for costs in the Authority is \$3,500 per day. Mr Santesso is seeking costs of \$3500 in respect of the investigation meeting. There has been no response from Italia Square. Accordingly, I order costs of \$3,500 to be paid by Italia Square to Ms Faulls within 14 days of the date of this determination.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**

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<sup>3</sup> [2011] NZEmpC 13

<sup>4</sup> [2015] NZEmpC 135