

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2016] NZERA Wellington 93
5627307

BETWEEN	HOLCIM (NEW ZEALAND) LIMITED Applicant
AND	NZ MERCHANT SERVICE GUILD INDUSTRIAL UNION OF WORKERS INCOPRORATED First Respondent
AND	AVIATION AND MARINE ENGINEERS ASSOCIATION Second Respondent

Member of Authority: Vicki Campbell

Representatives: Tim Cleary for Applicant
Helen McAra for First Respondent
Jim Roberts for Second Respondent

Investigation Meeting: On the papers

Submissions Received: 26 July 2016 from Applicant
8 August 2016 from First Respondent
8 August 2016 from Second Respondent

Determination: 9 August 2016

**COSTS DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

A. Costs will lie where they fall.

[1] In a determination dated 28 June 2016¹ I found that in order to give the redundancy clause in the collective agreement full effect the applicant was entitled to consider each position to be made redundant and where possible achieve its required

¹ [2016] NZERA Wellington 73.

reductions of staff through corresponding voluntary redundancies while ensuring it had appropriate and suitable manning of its vessels.

[2] I reserved costs indicating that as the matter concerned a dispute over the operation, application and interpretation of a collective agreement I was of a mind to let costs lie where they fall. I also indicated that the parties should attempt to resolve the matter of costs between them and if they were unable to do so they would have the opportunity to file cost memoranda and evidence. The parties have not been able to resolve the matter of costs and I am now in receipt of memoranda from the parties for consideration and determination.

[3] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. As noted in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*² there is discretion as to whether costs would be awarded and what amount. Further that the nature of the case can influence costs which has resulted in the Authority ordering that costs lie where they fall in certain circumstances.³

[4] The Employment Court in *Tertiary Education Union v Vice-Chancellor, University of Auckland*⁴ considered the question of whether as a matter of course, costs should lie where they fall in matters involving disputes. Her Honour Judge Inglis confirmed that the type of claim may, but need not, be a relevant factor in assessing a reasonable (if any) contribution to costs.⁵

Determination of costs

[5] The applicant seeks a contribution to its costs based on the Authority's usual daily tariff approach. This is opposed on the basis that the matter was a genuine dispute about the terms of the collective agreement.

[6] All parties to the collective agreement required the intervention of the Authority to resolve a genuine dispute over the interpretation and application of their collective agreement. The potential impact for all parties to the dispute was significant.

² (2006) 7 NZELC 98,128; [\[2005\] ERNZ 808](#); (2005) 3 NZELR 1 (EMC).

³ Above n 2 at [44].

⁴ [2016] NZEmpC 6.

⁵ Above n 3 at [14].

[7] I am of the view that costs should lie where they fall, each party bearing their own costs and no order for costs will be made.

Vicki Campbell
Member of the Employment Relations Authority