

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2017] NZERA Auckland 95  
5641832

BETWEEN                      MOHAMMAD ASLAM  
   Applicant  
  
A N D                              TRANSPORTATION  
   AUCKLAND CORPORATION  
   LIMITED  
   Respondent

Member of Authority:      Anna Fitzgibbon

Representatives:           Applicant in person  
   Scott Worthy, Counsel for Respondent

Date of Determination:    3 April 2017

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**COSTS DETERMINATION OF  
THE EMPLOYMENT RELATIONS AUTHORITY**

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- A.      Mr Mohammad Aslam is ordered to contribute \$4,500 towards  
         Transportation Auckland Corporation Limited's costs.**

**The substantive determination**

[1]      In an oral determination of the Authority issued on 22 February 2017<sup>1</sup>, the Authority determined that:

- (a)      Mr Mohammad Aslam's dismissal by Transportation Auckland Corporation Limited (Transportation Auckland) was justified. Accordingly, Mr Aslam did not have an employment relationship problem.
- (b)      Costs were reserved. Transportation Auckland was given 14 days to file a memorandum as to costs from the date of the determination and

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<sup>1</sup> [2017] NZERA Auckland 45

Mr Aslam was given 14 days from receiving the memorandum from Transportation Auckland to reply.

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

[2] The Authority's power to award costs arises from Schedule 2, clause 15 of the Employment Relations Act 2000. This confers a wide discretion on the Authority to award costs on a principled basis.

[3] The Full Employment Court decision in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*<sup>2</sup> sets out the principles that apply to awards of costs in the Authority. Principles include:

- There is a discretion as to whether costs should be awarded and as to the amount.
- Equity and good conscience is to be considered on a case by case basis.
- Costs are not to be used as punishment or an expression of disapproval of the unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account when inflating or reducing an award.
- It is open to the Authority to consider whether all or any of the parties' costs were unnecessary or unreasonable.
- Costs generally follow the event.
- "Without prejudice except as to costs" offers can be taken into account.

### **Costs determination**

[4] The Employment Court in *Carter Holt Harvey v. Eastern Bays 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

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

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

jurisdiction. This approach has been affirmed by the Employment Court more recently in *Fagotti v. Acme & Co Ltd*<sup>4</sup>. I adopt that approach.

[5] Counsel for Transportation Auckland filed a memorandum as to costs on 8 March 2017. Mr Aslam failed to file a memorandum in reply.

[6] Counsel for Transportation Auckland has provided details of costs incurred to defend Mr Aslam's claims along with invoices. Costs incurred totalled \$8,800 (excluding GST). Counsel for Transportation Auckland is of the view the matter took one day on the first day and 1 hour on the second day. Counsel seeks costs of \$4,500 for the first day and \$500 for the second day, a total of \$5,000 in costs, in accordance with the Authority's normal daily tariff.

[7] In my view, this matter involved an investigation meeting of one full day. The meeting started at 10am and concluded at 4pm on the first day. The matter was reconvened for approximately an hour on the second day. In total, not taking into account breaks, the investigation meeting time amounted to 8 hours.

[8] In the absence of any submissions or information from Mr Aslam, it is my view that there is no reason to depart from the Authority's normal daily rate.

[9] Mr Aslam is ordered to pay Transportation Auckland the sum of \$4,500 in costs pursuant to clause 15 of Schedule 2 of the Act. This sum represents the Authority's normal daily tariff of costs for one full day of an investigation meeting.

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

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