

Authority alone and no further costs should apply to that proceeding. On that basis it submits that costs should be awarded in respect of a half 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). 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 as confirmed in *Fagotti v Acme & Co Ltd*.³ .

Determination

[9] 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 one day investigation meeting the tariff would normally equate to \$4,500.00.

[10] Costs normally follow the event and Access is entitled to a contribution towards its costs.

[11] The circumstances attending this investigation were unusual in that the Respondent is suffering from a health condition which makes him susceptible to stress as supported by medical evidence submitted by the Respondent.

[12] It was therefore agreed between the parties that the Respondent's evidence would be taken in a subsequent meeting to the Investigation Meeting.

[13] Whilst it had been envisaged initially that the Applicant would be present by telephone with the ability to cross-examine Mr Cornish, it was decided that even this might be too stressful for Mr Cornish and it was therefore agreed that the subsequent meeting would be attended solely by the Member and an Authority Officer. This meeting was recorded and transcribed as a means for providing the Applicant with the opportunity for comments, questions and submissions based on all the evidence.

[14] While the circumstances were unusual I consider it appropriate to regard the process as a 1 day investigation meeting and award costs accordingly.

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2015] NZEmpC 135 at [114]

[15] I order that CTVL pay to Mr Gildenhuis the sum of \$4,500.00 costs, pursuant to clause 15 of Schedule 2 of the Act.

Eleanor Robinson
Member of the Employment Relations Authority