

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2018] NZERA Christchurch 16  
3007851

BETWEEN	NATHAN GILLETTE Applicant
AND	ROOFPOWER INSTALLATIONS LIMITED (previously named SUNPOWER LIMITED) First Respondent
AND	THOMAS GREEN Second Respondent

Member of Authority: Andrew Dallas

Representatives: Lee James, Counsel for Applicant  
Thomas Green, Director of the First Respondent

Submissions received: 19 January 2018 from the Applicant  
26 January from the Respondent

Determination: 12 February 2018

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Introduction**

[1] By determination issued on 26 October 2017, the Authority made findings about Nathan Gillette's employment relationship problem with Sunpower Limited (now known as Roofpower Installations Limited) (the company) and Patrick Green.<sup>1</sup>

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<sup>1</sup> See, *Gillette v Roofpower Installations Limited (previously named Sunpower Limited)* [2017] NZERA 198

[2] The determination reserved costs but encouraged the parties to resolve that issue themselves. It included an indication that, if asked to determine costs, the Authority's assessment would be the notional daily tariff of \$4500.<sup>2</sup>

[3] In a memorandum on costs subsequently lodged by Mr Gillette, through his representative, he sought an order for a costs award of \$8,000. This was around 50 per cent of the actual costs of representation which were \$19,092. It was not clear from the material provided by Mr Gillette whether the actual costs figure was inclusive or exclusive of goods and services tax.

[4] Mr Gillette sought an increase in the notional daily tariff on the basis of non-compliance with earlier determinations of the Authority including its primary determination and a subsequent compliance order and because of the collateral personal impacts non-compliance had on him and his family.<sup>3</sup> Mr Green rejected these arguments and said any costs award should be minimal and reflect the length of the investigation meeting.

### **Evaluation**

[5] The investigation meeting on 6 October 2017 lasted less than four hours. A "day" in the Authority is seven hours. Four-sevenths (or 57%) of \$4500 is \$2565. The figure is the appropriate notional tariff in this matter. None of the factors identified by Mr Gillette justify an increase in the tariff. In my view, these factors go to compliance and enforcement rather than a question of costs.

[6] Mr Gillette did not specify whether the company or Mr Green should pay any costs award or, in the event both were ordered to contribute, how any award should be apportioned between them. However, as Mr Gillette's (successful) proceedings were primarily directed at Mr Green, I find it is for him to fully make the contribution to Mr Gillette's costs of representation.

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<sup>2</sup> *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].

<sup>3</sup> See, *Gillette v Sunpower Limited* [2017] NZERA Christchurch 1 and *Gillette v Sunpower Limited* [2017] NZERA Christchurch 171.

## **Result**

[7] The amount of \$2565 must be paid by Mr Green to Mr Gillette within 14 days of the date of this determination.

A handwritten signature in blue ink, consisting of a vertical stroke on the left and a long horizontal stroke extending to the right.

Andrew Dallas  
Member of the Employment Relations Authority