

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**[2018] NZERA Auckland 410  
3029552**

BETWEEN

MIRIAM ABDALLAH  
Applicant

AND

AKINA TRADING LIMITED t/a  
THE BRAND OUTLET  
Respondent

Member of Authority: Eleanor Robinson

Submissions received: 19 December 2018 from Applicant  
7 December 2018 from Respondent

Determination: 21 December 2018

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In determination [2018] NZERA Auckland 225 it was determined that the Applicant, Ms Miriam Abdallah, had not raised a personal grievance within the statutory 90 day time limit with the Respondent, Akina Trading Limited t/a The Brand Outlet (Akina).

[2] In determination [2018] NZERA Auckland 344 it was determined that, other than a minor breach of s8, Akina had not breached the Holidays Act 2003.

[3] In both determination costs had been reserved in the hope that the parties would be able to resolve this issue between themselves. Unfortunately, they have been unable to do so, and both parties have filed submissions in respect of costs.

[4] The matter involved a half day Investigation Meeting on 2 July 2018 in relation to the first claim, and the second claim was heard 'on the papers'.

[5] Akina is seeking a contribution to its actual costs of \$7,625.07 (excluding GST) and has provided invoices in support of its claim. It submits that costs in respect of the substantive hearing should be increased based upon the conduct of the Applicant's representative who did not adhere to the Authority's timetabling directions.

[6] Mr Bennett submits on behalf of Ms Abdallah that costs should lie where they fall in respect of both determinations.

### *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*<sup>1</sup>.

[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*<sup>2</sup> as confirmed in *Fagotti v Acme & Co Ltd*.<sup>3</sup>

### **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 half day investigation meeting the tariff would normally equate to \$2, 250.00.

[10] Costs normally follow the event and although Akina was represented by its directors at the investigation meeting held on 2 July 2018 I accept that it had sought and obtained legal advice for that process as supported by invoices. As a result it can claim costs in respect of the matter.

[11] I further accept that the conduct of a party may have the effect of increasing costs. In arriving at a decision on this issue I have taken into consideration the non-adherence by the Applicant's advocate to the Authority's directions as to timetabling.

[12] The first investigation involved a half day investigation. Based on the normal daily tariff in the Authority I determine that the appropriate amount to be ordered in respect of costs is \$2,500.00 being a half day tariff amount increased to take account of the Applicant's conduct.

[13] The second investigation took place 'on the papers' and the Respondent was largely, though not wholly successful in that matter. I determine that is entitled to a contribution towards its costs.

[14] I consider it appropriate to base the level of costs on the normal tariff in the Authority as at the date of filing and to take a half day investigation meeting as the appropriate amount of time required to be spent on this straightforward matter.

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<sup>1</sup> [1996] 2 ERNZ 622.

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

<sup>3</sup> [2015] NZEmpC 135 at [114].

[15] Taking into consideration the fact that the Respondent was not wholly successful in the matter, I determine that \$1,000.00 the appropriate amount to be ordered in respect of costs on this secondary matter.

[16] I order that Ms Abdallah pay to Akina the sum of \$3,500.00 costs, pursuant to clause 15 of Schedule 2 of the Act.

[17] I order the payment is to be made within 28 days of the date of this determination.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**