

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKAURAU ROHE**

**[2019] NZERA 569  
3050852**

BETWEEN	SHANE BICKNELL Applicant
AND	RED STAG METAL FABRICATION LIMITED First Respondent
	NICOLA WATKINS Second Respondent

Member of Authority:	Eleanor Robinson
Representatives:	Beverley Edwards, Counsel for the Applicant Nicola Watkins, Representing the First Respondent and Second Respondent
Submissions received:	30 September 2019 from Applicant 22 & 30 September 2019 from Respondent
Date Determination:	4 October 2019

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] In determination [2019] NZERA Auckland 541 it was determined that the Applicant, Mr Shane Bicknell, had been unjustifiably disadvantaged by the Respondent, Red Stag Metal Fabrication Ltd (Red Stag), but that he had not been constructively dismissed by, or sexually harassed during his employment with, Red Stag.

[2] In that 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.

[3] The matter involved a one day Investigation Meeting.

[4] Mr Bicknell is seeking a contribution to his actual costs on the usual tariff basis for costs in the Authority of \$4,500.00 for the first day of hearing, reduced by the same level for his contribution to the situation giving rise to his personal grievance as determined by the Authority in determination [2019] NZERA Auckland 541 i.e. by 40%.

[5] Mr Bicknell accordingly is seeking the sum of \$2000.00 as a contribution to his costs.

### *Principles*

[6] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) which states:

#### **15 Power to award costs**

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[7] 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>1</sup> as confirmed in *Fagotti v Acme & Co Ltd*.<sup>2</sup> .

[8] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>3</sup> that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*<sup>4</sup> at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.”

[9] It is also a principle that costs are not to be used as a punishment or expression of disapproval of the unsuccessful party’s conduct.

### **Costs Award**

[10] 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.

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

<sup>2</sup> [2015] NZEmpC 135 at [114]

<sup>3</sup> [2005] 1 ERNZ 808

<sup>4</sup> [2001] ERNZ 305

[11] Costs normally follow the event. In this case, both parties had some degree of success, and this was recognised in determination [2019] NZERA Auckland 541 in which I expressed a view that costs should take account of the degree of success experienced by both parties in this matter. I find that the costs submission made by the Applicant has reflected that view.

[12] Red Stag has submitted that costs be made by way of instalments. This suggestion is not acceptable to the Applicant and I do not award it.

[13] I order that Red Stag pay to Mr Bicknell the sum of \$2,000.00 costs, pursuant to clause 15 of Schedule 2 of the Act.

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