

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2019] NZERA 269
3054842

BETWEEN	AVIATION WORKERS UNITED INCORPORATED Applicant
AND	GATE GOURMET NEW ZEALAND LIMITED Respondent

Member of Authority:	Vicki Campbell
Representatives:	Michael O'Brien for Applicant Emma Butcher for Respondent
Submissions received:	4 April 2019 from Applicant 23 April 2019 from Respondent
Determination:	6 May 2019

COSTS DETERMINATION OF THE AUTHORITY

- A. Gate Gourmet New Zealand Limited is ordered to pay to Aviation Workers United Incorporated the sum of \$1,571.56 as a contribution toward costs within 14 days of the date of this determination.**

[1] In a determination dated 11 March 2019 I declined an application for compliance orders by Aviation Workers United Inc (the Union) and held that Gate

Gourmet New Zealand Limited had breached its statutory duty of good faith. I made orders imposing penalties against Gate Gourmet Limited.¹

[2] I reserved costs and invited the parties to resolve the issue between them. The parties have been unable to resolve the matter and I have received submissions. The union seeks a contribution to its costs of \$4,000 plus reimbursement of the filing fee of \$71.56.

[3] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks 'reasonable'.² The principles applying to costs are well settled and do not require repeating.³

[4] An assessment of costs in the Authority will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.⁴ As noted in the determination the investigation meeting took one hour so the starting point on a proportional basis is \$750.

[5] There was a mixed measure of success by both parties. Although the Union was successful in its claim for a penalty other aspects of the Union's claim were not successful. The situation of mixed success has been examined by the Court in *Coomer v JA McCallum and Son Limited*.⁵

[6] Ultimately I must stand back and look at things in the round.⁶ Having done so the Union must be considered the successful party. The compliance orders related to the application of s 32 and 34 of the Act. In its statement of problem the Union sought five compliance orders, three of which were withdrawn prior to the investigation meeting.

¹ *Aviation Workers United Incorporated v Gate Gourmet New Zealand Limited* [2019] NZERA 144.

² Employment Relations Act 2000, Schedule 2, clause 15.

³ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

⁴ Practice Note 2, Costs in the Employment Relations Authority.

⁵ *Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156.

⁶ *Ibid* at [43].

[7] An important part of the Union's application was the claim for the imposition of penalties for Gate Gourmet's failure to provide information in a timely fashion to allow information to be considered as part of the bargaining process between the two parties.

[8] The Union seeks an uplift in costs to account for the failures by Gate Gourmet to provide information relevant to the investigation meeting until late on the eve of the investigation meeting. The failure to provide the information until so late in the day and so close to the investigation meeting resulted in the investigation meeting being delayed to enable Mr O'Brien to take instructions from his client. It also meant the Union had to prepare for the investigation meeting on the basis that all issues would be argued which unnecessarily increased costs.

[9] The Union also seeks in uplift to take into account the need to prepare costs submissions. The Union says Gate Gourmet has failed to respond to its invitations to resolve costs and this has required the Union to file submissions seeking a determination for the Authority on costs.

[10] Gate Gourmet says costs should be minimal as both parties had a measure of success. It submits that it was doing its best to provide information while also responding to numerous matters raised by the Union's lawyer. Gate Gourmet rejects the Union's application for costs on costs.

[11] The substantive matter was granted urgency and the parties were referred to urgent mediation with a date for the investigation meeting being set four days after mediation.

[12] In reaching my conclusions on an appropriate level of contribution I have taken into account the success of both parties and the late withdrawal of claims at the investigation meeting.

[13] In relation to the provision of information, the Union were aware Gate Gourmet had agreed during mediation to provide the information it sought. It was however, contingent on Gate Gourmet to ensure it kept its promises to provide the information in a timeframe that allowed the Union to consider the information and the relevance of that information to its claims in the Authority.

[14] I have concluded a small uplift in the daily tariff is appropriate. Gate Gourmet New Zealand Limited is ordered to pay to Aviation Workers United Incorporated the sum of \$1,571.56 as a contribution toward costs within 14 days of the date of this determination.

[15] In its submissions the Union seeks a declaration that Gate Gourmet has further breached its duty of good faith. It is not appropriate to raise new claims in submissions. Accordingly no declarations will be made.

Vicki Campbell
Member of the Employment Relations Authority