

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2019] NZERA 500
3044072**

BETWEEN	A LABOUR INSPECTOR, MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Applicant
AND	MITTAL & SON LIMITED First Respondent
AND	SOHAN MITTAL Second Respondent
AND	HIREN PATEL Third Respondent

Member of Authority: Eleanor Robinson

Submissions received: 5 August 2019 from Applicant
None from Respondents

Determination: 27 August 2019

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination [2019] NZERA 406 dated 9 July 2019 it was determined that the First and Second Respondents were liable for breaches of the Holidays Act 2003 and the Wages Protection Act 1996.

[2] In that determination costs were reserved in the hope that the parties would be able to settle this issue between them. Unfortunately they have been unable to do so, and the Applicant has filed submissions in respect of costs.

[3] This matter involved almost a full day Investigation Meeting, with written submissions from the parties being submitted subsequent to that. Ms Blick, on behalf of the Applicant, is seeking a contribution to legal costs of \$2,500.00 based upon the normal

daily tariff in the Authority on a pro-rata basis, allocated equally between the First and Second Respondents.

[4] Ms Blick, on behalf of the Applicant, submits that the Ministry of Business, Innovation and Employment (MBIE) expended resources to deal with the breaches of employment standards, including:

- i. Perusal of documents (including evidence);
- ii. Preparation of statements and documents for the investigation meeting;
- iii. Preparation for investigation meeting submissions;
- iv. Attendance at the investigation meeting;
- v. Drafting of correspondence and other documents for filing; and
- vi. Phone calls (including attendance at teleconferences)

Principles

[5] 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.

[6] Costs are at the discretion of the Authority, as observed by Chief Judge Colgan in *NZ Automobile Association Inc v McKay*¹.

[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*² as confirmed in *Fagotti v Acme & Co Ltd*.³

[8] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*⁴ that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria*

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2015] NZEmpC 135 at [114]

⁴ [2005] 1 ERNZ 808

*University of Wellington v Alton-Lee*⁵ at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.”

Determination

[9] As observed, a tariff based approach is that usually adopted by the Authority, and costs normally follow the event. The Applicant is entitled to a contribution towards its costs.

[10] The Applicant has used MBIE resources in respect of this matter. I find it reasonable for the Applicant to have used MBIE resources, and find that the costs of so doing have been reasonably incurred.

[11] Accordingly the First and Second Respondents are ordered to pay the Applicant the sum of \$1,250.00 each towards its legal costs pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

Eleanor Robinson
Member of the Employment Relations Authority

⁵ [2001] ERNZ 305