

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2019] NZERA 42
3034892

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| BETWEEN | EUGENE CLARK Applicant |
| AND | EASTERN BAY MOTORS LIMITED Respondent |

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| Member of Authority: | Vicki Campbell |
| Representatives: | Natalie Bradley for Applicant Stan Austin for Respondent |
| Submissions received: | 17 December 2018 from Applicant 7 January 2019 from Respondent |
| Determination: | 30 January 2019 |

COSTS DETERMINATION OF THE AUTHORITY

- A. Eastern Bay Motors Limited is ordered to pay to Mr Clark the sum of \$1,500 as a contribution to his costs within 14 days of the date of this determination.**

[1] In a determination dated 26 November I found Mr Clark had been unjustifiably dismissed and ordered remedies to be paid accordingly.¹ The remedies were reduced to take into account contributory conduct by Mr Clark.

[2] I reserved costs, indicating that if the parties were unable to resolve costs, both parties would have the opportunity to file cost memoranda and evidence. The parties have been unable to resolve the matter.

¹ [2018] NZERA Auckland 369.

[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. Under normal circumstances the Authority would apply a starting point of a notional daily tariff for quantifying costs.

[4] 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

[5] An assessment of costs 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

[6] The investigation meeting took half a day so the starting point is \$2,250. Mr Clark was supported in his application by a grant of legal aid amounting to \$2,645.

[7] In addition to his claim for unjustified dismissal Mr Clark initially claimed one or more conditions of his employment had been affected to his disadvantage by the unjustified actions of Eastern Bay Motors Limited (EBML) and arrears of wages. The claims for disadvantage and arrears of wages were withdrawn at the investigation meeting.

[8] In addition, EBML had lodged a counter-claim against Mr Clark for recovery of a debt for tools. This claim was settled after the investigation meeting had concluded.

[9] While the parties have had a measure of success Mr Clark's primary claim of unjustified dismissal was successful for him and accordingly he was the successful party.

[10] I consider it appropriate to decrease the tariff to recognise Mr Clark's late withdrawal of two claims.

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.

[11] In all the circumstances I consider an appropriate contribution to Mr Clark's costs to be \$1,500. Eastern Bay Motors Limited is ordered to pay to Mr Clark the sum of \$1,500 as a contribution to his costs within 14 days of the date of this determination.

Vicki Campbell
Member of the Employment Relations Authority