

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 177
3080134

BETWEEN ETHAN KARLOS HARDY
Applicant

AND BOUTIQUE RENOVATIONS
LIMITED
Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Andrew Schirnack and Simon Schofield, counsel for the
Applicant
Mark Wilson, for the Respondent

Investigation Meeting: On the papers

Submissions [and further 06 April 2020 from the Applicant
Information] Received: Nothing from the Respondent

Date of Determination: 04 May 2020

COSTS DETERMINATION OF THE AUTHORITY

- A. The respondent, Boutique Renovations Limited (Boutique) must pay the applicant, Mr Ethan Karlos Hardy the sum of \$2,666.56 as a contribution to his reasonably incurred costs of representation.**

Substantive determination

[1] By determination on 10 March 2020, the Authority found that Boutique had breached minimum employment standards in respect of its employment of Mr Hardy, had failed to pay the Inland Revenue Department KiwiSaver contributions in respect of Mr Hardy and had unjustifiably constructively dismissed Mr Hardy. Remedies were awarded in Mr Hardy's

favour and penalties were awarded against Boutique.¹ Costs were reserved. The parties were invited to exchange memoranda as to costs.

Submissions as to costs

[2] Counsel for Mr Hardy filed a memorandum as to costs seeking a contribution of \$3,166.56 in costs. The amount is made up of \$2,250 in accordance with the Authority's daily tariff for the half day investigation meeting, disbursements of \$416.56 comprising the filing fee and the costs of a process server in serving proceedings on Boutique and costs on costs of \$500.

[3] Counsel for Mr Hardy also attached an email exchange with Mr Wilson of Boutique seeking to settle the issue of costs for the sum of \$2,666.56 prior to the filing of costs memoranda. Mr Wilson's reply was that he wished to "appeal" the Authority's decision and that he could not meet his lawyer at that point in time.

Costs determination

[4] The Authority's power to award costs against a party is set out in clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) which provides as follows:

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.

[5] The Authority has a discretionary power to award costs which must be exercised on a principled basis.

[6] The principles and the approach adopted by the Authority on which an award of costs are made are well settled and outlined in *PBO Limited (formerly Rush Security Limited) v Da Cruz*.² Principles set out in *Da Cruz* include that costs are to be modest, not used as a punishment and reasonable. As to quantification of costs, the principle is one of reasonable contribution to costs actually and reasonably incurred.

¹ *Hardy v Boutique Renovations Limited* [2020] NZERA 112.

² [2005] 1 ERNZ 808.

[7] The Authority's assessment of costs usually starts from a notional daily tariff which may be adjusted upwards or downwards to account for relevant factors or particular circumstances in the case. The applicable tariff is \$4,500 for the first day of an investigation meeting and \$3,500 for each day thereafter. For this half day investigation meeting, the applicable tariff is \$2,250.

[8] Having considered the submissions made by counsel for Mr Hardy, I find that Mr Hardy as the successful party is entitled to an award of costs in accordance with the normal tariff together with costs incurred which I consider are reasonable.

[9] I order payment of the sum of \$2,666.56 to be paid by Boutique to Mr Hardy within 28 days of the date of this determination.

Anna Fitzgibbon
Member of the Employment Relations Authority