

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 497
3099092

BETWEEN	MARITIME UNION OF NEW ZEALAND Applicant
AND	ISO LIMITED Respondent

Member of Authority: Marija Urlich

Representatives: Simon Mitchell, counsel for the Applicant
Kate Ashcroft and Jennifer Steele, counsel for the Respondent

Investigation Meeting: On the papers

Submissions received: 19 November 2020 from Applicant
4 November 2020 from Respondent

Determination: 2 December 2020

COSTS DETERMINATION OF THE AUTHORITY

[1] MUNZ withdrew its application part way through proceedings. ISO Limited seeks a contribution to costs. The parties have attempted to resolve this issue themselves without success. Submissions were subsequently filed.

[2] MUNZ's substantive application concerned alleged breaches of good faith during bargaining which ISO denied. An investigation meeting was scheduled for 31 July 2020. At the investigation meeting MUNZ applied for an adjournment because, it was submitted, based on information received that morning from ISO, it believed the parties could resolve matters between them by resuming bargaining. ISO did not oppose

resuming bargaining but opposed the adjournment because it submitted, it was ready to proceed.

[3] The adjournment was granted and timetabling directions were made to progress the matter including a date by which MUNZ was to file an amended statement of problem and a case management conference was scheduled. The parties subsequently attended a case management conference which resulted in further timetabling orders which were ultimately not fulfilled because MUNZ withdrew the application.

ISO's claim for costs

[4] Submissions filed on behalf of ISO seek a costs award of \$4,500, the Authority notional daily tariff, and a contribution towards disbursements of \$500. ISO submits significant costs were incurred in preparing for and attending the hearing, MUNZ was aware of the issue which was the basis of the adjournment prior to the investigation meeting and MUNZ delay in filing an amended statement of problem has caused ISO to incur further costs.

[5] Actual costs incurred by ISO have been itemised and the claim for disbursements supported.

MUNZ's response

[6] MUNZ's submits a costs award is not appropriate in this matter because the investigation hearing was adjourned to allow the parties to resume bargaining, this was a proper use of the Authority, any delays were consequent to the second lockdown and other matters which were communicated to ISO and the Authority and caused no additional costs to be incurred.

Costs principles

[7] The Authority has power under clause 15 of Schedule 2 of the Act to award costs. This power is discretionary and must be used in a principled manner. In *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* the Employment Court set out principles guiding the Authority's approach to costs which include:

- The statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction.
- Equity and god conscience is to be considered on a case by case basis.
- Costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.
- Costs generally follow the event.
- Awards will be modest.
- Frequently costs are judged against a notional daily tariff.¹

Costs analysis

[8] This is not a situation where the Authority has issued a determination in favour of ISO and, as is the usual case, costs would follow such an event. However, ISO has been put to the expense of preparing for and attending a scheduled investigation meeting after commencement of which MUNZ sought to adjourn and which has not reconvened because the application was withdrawn. It is accepted MUNZ application arose from bargaining with ISO but the application was not so intrinsically linked to that bargaining that continuation of the bargaining would necessarily require adjournment of the proceedings or indeed, withdrawal. Accordingly, this is a situation where costs may be awarded.²

[9] The notional daily tariff is a starting point. The applicable daily tariff is \$4,500. The investigation meeting took about two hours.³ A fair starting point for costs is \$1500.

[10] There is no basis for uplift from that figure. The Authority is not in a position to make a factual finding as to whether the basis for the adjournment was a matter within MUNZ's knowledge prior to the investigation meeting. It is accepted that events beyond the control of MUNZ caused variations to the timetable set subsequent to the adjournment to be sought.

¹ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 8080, confirmed in *Fagotti v Acme & Co Ltd* [2015] NZEmp 135.

² *McMann v New Zealand Automobile Association Inc* unreported EmpC Christchurch CEC30/94, 18 August 1994.

³ The investigation meeting commenced at 10am and adjourned just before 12pm.

[11] The disbursements are recoverable as claimed.

Conclusion

[12] Maritime Union of New Zealand is ordered to pay ISO Limited \$2000 as a contribution to its costs within 21 days of the date of this determination.

Marija Urlich
Member of the Employment Relations Authority