

[2] The parties were asked to explore resolving costs by agreement but failed to do so. The matter was dealt with on the papers. The Overseeing Shepherd seeks costs as the successful party.

The Overseeing Shepherd's submission

[3] Counsel for The Overseeing Shepherd detailed his client's understanding of the Authority's discretionary jurisdiction and usual daily, tariff-based approach to costs. A suggestion was then made because the outcome of the determination had been successful for his client, costs should follow the event. Given the matter had been heard on the papers a costs contribution of \$2,250 was sought to reflect the Authority's approach of treating such matters as akin to half day investigation meetings noting costs incurred by The Overseeing Shepherd had exceeded the latter claim. No evidence of actual costs incurred was provided.

Ms Pilgrim and others' submission

[4] Counsel for Ms Pilgrim and others responded with a similarly concise submission suggesting in the unique circumstances of the case including the impecuniosity and relative youth of their clients including that they had children to support, a fair approach was to let costs lie where they fall. No evidence of impecuniosity or individual circumstances was provided.

Costs principles

[5] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 (the Act). The discretion it is accepted is guided by principles set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*² including that costs are not to be used as a punishment or as a reflection on how either party conducted proceedings and that awards are to be made consistent with the equity and good conscience jurisdiction of the Authority.³

² *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

³ Section 160(2) Employment Relations Act 2000.

Assessment

[6] A general principle for a successful party is that costs should normally 'follow the event' and here The Overseeing Shepherd was successful in resisting the application to have this matter removed to the Employment Court.

[7] Counsel for The Overseeing Shepherd in a supplementary submission noted an uneven balance in the incurring of legal costs with the applicants having counsel undertaking pro-bono work and the respondent having to rely on communal funding for ongoing legal costs. While there is some force in the respondent's submission there is still an evident resource advantage for them.

[8] The removal application although not granted, involved a unique matter to be determined by the Authority as it involved avowedly vulnerable individuals in a long running and ongoing legal process with unusually complex claims stemming from a past uneven power relationship.

[9] Looking at the totality of the issues and applying the available statutory discretion and taking an equitable approach, I consider that costs should lie where they fall.

Order

[10] I make no cost award and order that costs of the parties be left to lie where they fall.

David G Beck
Member of the Employment Relations Authority