

[4] Mr Fleming on behalf of Ms Du Fall submits that it is appropriate that costs lie where they fall. The reasons submitted include that:

- a) Each party succeeded in one application;
- b) The fact that the applicant had to pay the Authority filing fee; and
- c) The Respondent chose not to consent to the removal application but had no real argument against removal, which incurred additional costs for the applicant.

[5] Mr Williams and Ms Millar on behalf of MISB oppose the submission that costs lie where they fall for both matters on the basis that:

- a) The two matters cannot be treated as having been symmetrical or on an equal footing, one requiring a formal hearing, one a procedural determination only;
- b) It is appropriate costs lie where they fall for the removal application, as an optional application brought by the applicant; and
- c) the respondent is entitled to costs in relation to the applicant's failed reinstatement application.

Principles

[6] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 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.

[7] Costs are at the discretion of the Authority¹. 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 Ltd) v Da Cruz (Da Cruz)*².

[8] It is a principle set out in *Da Cruz* that costs are not to be used as a punishment. It is also a principle that costs are discretionary, and awards made are consistent with the Authority's equity and good conscience jurisdiction.

¹ *NZ Automobile Association Inc v McKay* [1996] 2 ERNZ 622.

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

Costs Award

[9] Having considered the matter I am of the opinion that it is appropriate costs lie where they fall in respect of the removal application as submitted by the parties.

[10] In respect of the interim reinstatement application, this involved an investigation meeting which was just under a half day's duration since it was for the presentation of submissions only. Costs would usually be awarded to the successful party in such circumstances.

[11] **I order Ms Du Fall to pay MISG the sum of \$2,250.00 as a contribution towards costs.**

Eleanor Robinson
Member of the Employment Relations Authority