

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA250A/10
5273182

BETWEEN DRAGOS RADU
Applicant

AND DUCT WORK SPECIALITIES
LIMITED
Respondent

Member of Authority: Marija Urlich

Representatives: Mark Nutsford, Advocate for Applicant
James Duckworth, Counsel for Respondent

Submissions received: 5 June 2010, from Applicant
14 June 2010 from Respondent

Determination: 17 June 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 24 May 2010 (AA250/10) I found Mr Radu had established a personal grievance for unjustified dismissal and made orders in his favour. Costs were reserved. The parties have been unable to resolve these issues and memoranda have been filed setting out the parties' respective positions in respect of costs.

[2] In his memorandum to the Authority Mr Nutsford advises Ms Radu's costs in relation to this matter total \$9731.25 including GST. Disbursements have not been separately quantified. He seeks a costs award reimbursing this sum on the following grounds:

- The costs were reasonably incurred;
- Duct Work adopted an unreasonably obstructive approach to Mr Radu's claim including failing to make itself available to attend mediation within

the timeframe as directed by the Authority and not engaging in discussions to resolve the issue of costs.

[3] Mr Duckworth submits that an award of costs of no more than \$2000 would be reasonable given:

- The investigation meeting in this matter was 1 day;
- The usual \$3000 notional daily rate in the Authority should be reduced given Mr Radu's claim of unfair bargaining was unsuccessful and he succeeded in obtaining 28% of awards sought;
- Mr Nutsford's attempt to introduce new evidence after the conclusion of the investigation meeting unnecessarily put the respondent to additional costs;
- The issues before the Authority were straightforward and there was nothing unusual or exceptional about this matter which would warrant a higher than normal costs award; and
- The respondent denies any deliberate delay in its conduct of this matter.



Determination

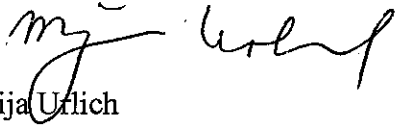
[4] *PBO Ltd v Da Cruz*¹ sets out the appropriate principles to be applied by the Authority in exercising its costs discretion.

[5] It is usual that costs follow the event. I find that an award of costs is warranted in this matter. Grounds for an award at the high end of the tariff do not exist. The purpose of costs is not to punish or express disapproval for conduct which does not relate to the proceedings or unnecessarily increases costs. I accept this is not the case here; the employment relationship problem was properly before the Authority for investigation and the parties participated in that process.

[6] In the circumstances, in particular the straightforward nature of the matters before the Authority and the hearing time involved I set the costs award at \$2500.

¹ [2005] 1 ERNZ 808

[7] **Duct Work Specialities Limited is ordered to pay Dragos Radu \$2500 in costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.**



Marija Urlich

Member of the Employment Relations Authority

