

BETWEEN

SERENA ANDERSON
Applicant

AND

NORTHERN HYDROPONIC
SUPPLIES 2006 LIMITED
Respondent

Member of Authority: Eleanor Robinson

Submissions received: 16 August 2018 from Applicant
None received from Respondent

Determination: 11 October 2018

COSTS DETERMINATION OF THE AUTHORITY

[1] In determination [2018] NZERA Auckland 257 it was determined that the Applicant, Ms Serena Anderson, had been unjustifiably dismissed by the Respondent, Northern Hydroponic Supplies 2006 Limited (Northern Hydroponic).

[2] In that determination costs had been reserved in the hope that the parties would be able to resolve this issue between themselves. Unfortunately, they have been unable to do so, and the Applicant has filed submissions in respect of costs.

[3] This matter involved a one day investigation meeting. Mr Barrow, on behalf of Ms Anderson, citing actual costs of \$7,461.12, is seeking a contribution towards costs of \$4,500.00.

Principles

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

[5] Costs are at the discretion of the Authority, as observed by Chief Judge Colgan in *NZ Automobile Association Inc v McKay*¹.

[6] The principles and the approach adopted by the Authority on which an award of costs is made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*² as confirmed in *Fagotti v Acme & Co Ltd*.³

[7] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*⁴ that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*⁵ at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred”.

[8] It is also a principle that costs are not to be used as a punishment or expression of disapproval of the unsuccessful party’s conduct.

Determination

[9] A tariff based approach is that usually adopted by the Authority, which has the discretion to raise or lower the tariff, depending upon the circumstances. For a one day investigation meeting the tariff would normally equate to \$4,500.00.

[10] Costs normally follow the event. The Applicant was successful in respect of her claim against the Respondent and she is entitled to costs.

[11] I consider it appropriate to award a contribution to costs for a one day investigation meeting according to the daily tariff.

[12] I order that Northern Hydroponic pay to Ms Anderson the sum of \$4,500.00 costs, pursuant to clause 15 of Schedule 2 of the Act.

Eleanor Robinson
Member of the Employment Relations Authority

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2015] NZEmpC 135 at [114]

⁴ [2005] 1 ERNZ 808

⁵ [2001] ERNZ 305