

information to support the claim her role had changed. PFL says it remains unaware of the basis for Ms Anderson's claims.

Process leading to the Authority's investigation

[3] Ms Anderson resigned from her employment after her statement of problem was received by the Authority. No further claim associated with that event has been actioned.

[4] In a case management conference call on 13 December 2017 Ms Anderson advised she was now representing herself but was contemplating obtaining new counsel. She was directed to provide an amended statement detailing the basis of her claim. That information was to be provided to the Authority by 19 January 2018. With the parties agreement the investigation meeting was set down for 27 April 2018. Those matters were confirmed in an email sent to the parties the following day.

[5] An amended statement was not received by the Authority.

[6] Over the months of January and February 2018 the Authority sent three separate emails to Ms Anderson seeking clarification as to her intentions.² On each occasion the Authority advised if she no longer wished to have the Authority investigate her claims she would need to notify the Authority to that effect.

[7] On 26 February 2017 the Authority asked Ms Anderson to urgently respond to its correspondence or the date held for the investigation may be vacated. Again, Ms Anderson did not respond. PFL, via its counsel requested the Authority proceed with the scheduled meeting so as to obtain a resolution to the claims against it, which it was entitled to seek.

[8] On 14 April 2018 Ms Anderson was informed by email that the scheduled investigation meeting would continue unless she withdrew her claim. A Notice of Investigation Meeting accompanied that correspondence.

[9] In the afternoon before the investigation meeting was scheduled to begin Ms Anderson contacted the Authority by email. She said she had "only just managed" to access all her emails and had been unaware of the [investigation

² 29 January 2018, 5 February 2018, 26 February 2018.

meeting] notification. She asked what information she needed to provide and whether the date of the meeting could be changed.

[10] By the time the email was read by the support officer I had already left the Authority's registry in Wellington and was traveling by car to Palmerston North in preparation for the investigation meeting scheduled for the following day. Ms Anderson was informed of that matter. She confirmed she had not instructed alternative counsel and that she understood the meeting would go ahead.

[11] Ms Anderson was not present at time the investigation meeting on 27 April 2018 was scheduled to begin. At 9.45am I sought to make contact with her by phone.

[12] The call went unanswered. I left a voice message advising the investigation meeting would be delayed for half-an-hour to allow her time to attend the meeting. Alternatively she was asked to urgently contact the Authority. No response was received. I am satisfied Ms Anderson was aware of the investigation meeting and she has not provided a good reason as to why she had failed to attend.

Determination

[13] Ms Anderson's application is dismissed for two reasons.

[14] Firstly, to the extent that I was able to investigate Ms Anderson's claims in her absence, I am not satisfied there is evidence of an unjustified disadvantage or a breach of good faith. Other than Ms Anderson's various assertions that she her job had changed drastically and that she had effectively been demoted,³ no further particulars were provided.

[15] Section 103(b)(1) of the Employment Relations Act defines a unjustified disadvantage personal grievance in the following way:

... the employee's employment, or 1 or more conditions of the employee's employment ... is or are or was ...affected to the employee's disadvantage by some unjustifiable action by the employer,

[16] The evidence given by PFL about the restructure and its attempts to engage with Ms Anderson on that matter is credible and supported by corresponding

³ Email of 6 September 2017, Notice of a Personal Grievance dated 7 September; Statement of Problem dated 4 October 2017

documentation. I accept its evidence that Ms Anderson's position, remuneration, reporting line, and duties was not altered by the changes. While it is clear Ms Anderson was then required to report to a different person post the restructure, that reassignment does not in and of itself, demonstrate an action that affected terms or conditions of her employment to her disadvantage, and was unjustifiable. Ms Anderson's has not established a claim of unjustified disadvantage for which PFL must answer.

[17] Next, the Notice of Investigation Meeting sent to Ms Anderson on 14 March 2017 and again on 26 April 2017 advised, amongst other things, the following:

If the applicant does not attend the investigation meeting, the matter may be dismissed and costs may be awarded against the applicant.

[18] Ms Anderson failed to attend the investigation meeting and prosecute her claim. It is appropriate to dismiss her claim.

Costs

[19] PFL sought a contribution to its costs of \$4,500 – the sum equal to the Authority's current full daily tariff.

[20] The power of the Authority to award costs arises from clause 15 of Schedule 2 of the Employment Relations Act which provides:

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.

[21] The relevant principles when assessing costs are set out in *PBO Ltd v Da Cruz*.⁴ Material to this determination the following principles are relevant;

- the Authority's discretion to award costs, including whether costs should be awarded and the quantum of any award is to be exercised in a principled manner and not arbitrarily;
- costs generally follow the event;

⁴ [2005] ERNZ 808

- an award of costs should not to be used as a punishment or as an expression of disapproval of a party's conduct, although conduct which increased costs unnecessarily can be taken into account in terms of an award;
- the nature of the case can also influence costs.

[22] PFL engaged an experienced solicitor to prepare for, and defend, the claims made against it. I accept PFL has incurred reasonable associated costs and that it is appropriate for Ms Anderson to contribute to those costs in circumstances where her claim was unsuccessful.

[23] At issue is what amount should be awarded. PFL submitted that the investigation meeting would likely to have taken a full day (or close to) had Ms Anderson attended the meeting. I accept PFL had prepared for the case based on that assessment.

[24] I consider a better starting point is to assess the length of the investigation meeting and then consider any other relevant factors.

[25] The meeting lasted slightly longer than 2.5 hours taking into account the extended time allowed for Ms Anderson to attend. I find Ms Anderson's failure to provide any particulars about the nature of her claim unnecessarily increased PFL's costs where it was obliged to provide information and corresponding evidence over a broad range of possible interactions, activities and events.

[26] Applying a pro-rated approach to the length of the meeting and allowing for a moderate uplift for conduct that unnecessarily increased costs. I initially considered an award of \$3,500 might be appropriate. On reflection I consider an award of that sum is too high and would be punitive. In the circumstances of this case I find a contribution of \$2,250 towards PFL's costs is reasonable.

Order

[27] Ms Judith Anderson is ordered to pay \$2,250 towards the costs of Pukewaiu Farm Limited.

Michele Ryan
Member of the Employment Relations Authority