

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 352
5374262

BETWEEN CATHERINE BECKMAN
Applicant

A N D ABDUL HUSSEIN t/a
HAIRPRO NEW LYNN
Respondent

Member of Authority: Anna Fitzgibbon

Representatives: May Moncur, Advocate for Applicant
Moira MacNab, Counsel for Respondent

Submissions Received: 17 September 2012 from Applicant
21 September 2012 from Respondent

Date of Determination: 09 October 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] Ms Moncur on behalf of Ms Beckman seeks an order for costs in the sum of \$4,000, plus disbursements of \$71.56 being the filing fee. Ms Moncur acknowledged that the sum being sought was higher than the amount that would be awarded if a notional daily tariff was applied but said that the way in which Mr Hussein had conducted himself in defending the claim increased costs unnecessarily.

[2] Ms Moncur referred to the late application for an adjournment of the investigation meeting by Mr Hussein's recently appointed Counsel, Ms MacNab as conduct which unnecessarily added to Ms Beckman's costs. Ms Moncur also referred to the late provision of documents as increasing Ms Beckman's costs unnecessarily.

[3] Ms MacNab accepts that Ms Beckman was partly successful in her claim. However, Ms MacNab says although Ms Beckman brought in effect four claims for compensation, namely unfair treatment, unjustified disadvantage and unfair dismissal which could be broken in to two parts, namely substantive justification for dismissal

and whether or not the dismissal was carried out in a procedurally fair manner, she only succeeded in one claim.

[4] Ms MacNab says taking into account these issues and the credibility findings made against Ms Beckman, the appropriate range of costs if any order was to be made should be in the vicinity of \$1,000 - \$1,500.

Determination

[5] The law on this subject is well settled¹. There are several principles to be applied by the Authority in determining an appropriate costs award. These include:

- equity and good conscience is to be considered on a case by case basis;
- costs are not to be used as a punishment or an expression of disapproval of the unsuccessful party's conduct although conduct which increased costs unnecessarily can be taken into account;
- whether all or any of the parties costs were unnecessary or unreasonable;
- costs generally following the event;
- without prejudice offers can be taken into account;
- awards of costs will be modest;
- costs are frequently judged against a notional daily rate;
- the nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[6] In the particular circumstances of this case, the Authority is persuaded that there should be some contribution towards Ms Beckman's costs by Mr Hussein to reflect her partial success.

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

[7] I found Ms Beckman's dismissal for redundancy unjustifiable because Mr Hussein failed to follow a fair procedure in dismissing her.

[8] I found in this case that Mr Hussein did not adequately comply with the statutory obligations under s.103A of the Employment Relations Act imposed upon him. Ms Beckman had no opportunity to discuss her proposed redundancy with Mr Hussein prior to the decision being made.

[9] One of the principles to be applied by the Authority relates to conduct unnecessarily increasing costs. I do not consider the late adjournment of the investigation meeting or the provision of documentation immediately before the meeting unnecessarily added to Ms Beckman's costs.

[10] Another relevant principle relates to equity and good conscience. I made a number of credibility findings in my substantive determination against Ms Beckman and this affects the award of costs.

Order for costs

[11] A notional daily rate of \$3,500 is commonly applied for a one day investigation meeting in the Authority. The investigation meeting in this case took a day and therefore the starting point for assessing costs is \$3,500.

[12] The questions of substance affecting whether the notional daily rate should be increased or decreased concern firstly Ms Beckman's partial success and secondly the credibility findings I made against her. The overall effect is that the notional daily rate should be decreased.

[13] I conclude that the notional rate should be decreased to \$1,500.00 plus disbursements of \$71.56.

[14] Mr Hussein is therefore ordered to contribute to Ms Beckman's costs in the sum of \$1,500 plus \$71.56 filing fee.

Anna Fitzgibbon
Member of the Employment Relations Authority

