

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2016] NZERA Auckland 4
5533215**

BETWEEN EMMA CAMPBELL
 Applicant

AND HOLISTIC VETS LTD
 Respondent

Member of Authority: Eleanor Robinson

Submissions received: 10 December 2015 from Applicant
 23 December 2015 from Respondent

Determination: 5 January 2016

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination [2015] NZERA Auckland 383 it was determined that the Applicant, Ms Emma Campbell, had not been unjustifiably dismissed by the Respondent, Holistic Vets Ltd (HVL).

[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 Mr Jacobson, on behalf of HVL, has filed a submission in respect of costs.

[3] The matter involved 1 and a half days of meeting time. Mr Jacobson did not appear at the Investigation Meeting however he provided legal assistance to HVL throughout the process.

[4] Mr Jacobson submits that an uplift to the normal daily rate tariff in the Authority is justified on the basis that the HVL incurred increased costs as a result of having to address the Applicant's unsuccessful interlocutory application to have the affidavit evidence of Dr Kirkland excluded and other factors, including the Applicant's failure to adhere to the Authority's timetable for the serving of evidence and the filing of a witness statement, including evidence of what took place at mediation.

[5] Mr Jacobson is also seeking an award of costs in respect of the costs submissions.

[6] Ms Nabney on behalf of Ms Campbell, opposes an award of costs on the basis that HVL was unrepresented at the Investigation Meeting, and unrepresented parties are not usually entitled to a costs award.

Principles

[7] 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.

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

[9] 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.

[10] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*³ that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*⁴ at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.”

[11] 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.

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2005] 1 ERNZ 808

⁴ [2001] ERNZ 305

Determination

[12] 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 1.5 day investigation meeting the tariff would normally equate to \$5,250.00.

[13] Costs normally follow the event and HVL is entitled to a contribution towards its costs. I accept that HVL was unrepresented at the Investigation Meeting, however invoices have been provided which confirm that Mr Jacobson had been providing HVL with legal assistance for that process. I further note that Mr Jacobson participated in the case management conference on behalf of HVL, so I am minded to make a costs award.

[14] This was not a complex case and the daily tariff takes account of preparation for a case of this nature. The issues which arose during the progress of the matter were resolved without involving an excessive amount of the Authority's time and I am not persuaded that this is a basis for increasing costs.

[15] Mr Jacobson also applies for an award to be made in respect of the costs submissions. This matter is being addressed 'on the papers' with no hearing time involved, and I therefore decline to award an uplift in costs on that basis.

[16] I have taken into account that fact that HVL were not legally represented at the Investigation Meeting when deciding upon the appropriate level of costs to award.

[17] Ms Campbell is ordered to pay HVL the sum of \$4,000 costs, pursuant to clause 15 of Schedule 2 of the Act.

Eleanor Robinson
Member of the Employment Relations Authority