

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2014] NZERA Wellington 55
5362458

BETWEEN ALICE CAWTHORNE
Applicant
AND ALLWAZE DESIGNS
LIMITED
Respondent

Member of Authority: P R Stapp
Representatives: David Oliver for Applicant
Diana Mill and Felicity Wong for Respondent
Submissions received: by 23 May 2014
Determination: 30 May 2014

COSTS DETERMINATION OF THE AUTHORITY

[1] The Authority reserved costs in [2014] NZERA Wellington. The applicant was successful in the substantive matter. She was awarded \$1,260 gross lost wages and \$1,500 compensation and \$168 for two days pay. Costs remain outstanding and subject to a disagreement on the outcome and an amount.

[2] Ms Cawthorne is legally aided. Her costs amount to \$2,947.25 (including disbursements and GST) for preparation and attendances.

[3] ALLWAZE has requested that an order be made for costs to lie where they fall or the Authority make a modest award because the respondent was not represented, the Authority's investigation meeting lasted half a day, the conduct of the applicant's representative speaking too long, an offer to settle was unreasonable and the respondent cannot afford to pay much.

Costs outcome

[4] Costs follow the event because Ms Cawthorne did have a measure of success on her claims. This is not a matter for costs to lie where they fall. The reason for this is that Ms Cawthorne has incurred legitimate costs to address her claims that she had a right to be heard on. Some of the costs may well have to be repaid for legal aid from the proceeds.

[5] The Authority's investigation meeting was scheduled for a full day but less time was required. It is not relevant that the respondent was not represented and saved its costs. Also, the matters that were raised about the substantive issues and the applicant's contribution have been disposed of in the substantive determination. They are not a factor in assessing costs. The time in the investigation meeting was not unduly prolonged given the duration of the Authority's investigation meeting, the information that had to be covered and the witnesses who needed to be heard. Indeed Mrs Mill had a support person present who was allowed to act as an advocate for Mrs Mill and ALLWAZE throughout the meeting, and had an opportunity to make submissions too.

[6] On the matter of the offer to settle it is not relevant and I have given it little weight given it was the applicant's assessment of an outcome and costs follow the event anyway. I am conscious that Ms Cawthorne should be able to enjoy some of the fruits of her success. However that comes with the risk of litigation and it may be that the amount she gets is much less because of the costs.

[7] Finally there is the matter of the financial ability of ALLWAZE to pay costs. This is a factor, but also may be a factor in any enforcement of the Authority's order (where the Authority also has the power to make orders by instalment). I am not convinced that ALLWAZE will not be able to pay some amount in the future. Also, I note too that the information from the respondent is not up to date, and there is no current financial position presented, and no statement of position with any independent input and no projected cash flow and banking details. Other information relates to Mrs Mill personally. I understand that she may have financial difficulties but based on the information available it does not satisfy me of the extent of any problem at present and that arrangements cannot be made for the future.

[8] I reduce the tariff to \$2,500.

Order of the Authority on costs

[9] ALLWAZE Designs Limited is to pay Alice Cawthorne \$2,500 costs.

P R Stapp
Member of the Authority