



New Zealand Employment Relations Authority Decisions

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Chapman-Labecka v Vetlife Limited (Christchurch) [2017] NZERA 1184; [2017] NZERA Christchurch 184 (30 October 2017)

Last Updated: 14 November 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2017] NZERA Christchurch 184
3000548

BETWEEN KASIA CHAPMAN-LABECKA Applicant

A N D VETLIFE LIMITED Respondent

Member of Authority: Helen Doyle

Representatives: Peter Cahill, Counsel for Applicant

Penny Shaw, Counsel for Respondent

Submissions Received: 10 October 2017 from Applicant

24 October 2017 from Respondent

Date of Determination: 30 October 2017

COSTS DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

A. Vetlife Limited is ordered to pay costs to Kasia Chapman-Labecka in the sum of \$4,500.

Substantive Determination

[1] In my determination dated 26 September 2017 I found that the applicant was unjustifiably dismissed from her employment with the respondent and awarded her reimbursement of lost wages and compensation. I reserved the issue of costs and set a timetable for submissions in the event that agreement could not be reached. I am now in receipt of submissions as to costs on behalf of the applicant and respondent.

The applicant's submissions

[2] Mr Cahill on behalf of the applicant refers to the judgment of the full Court of the Employment Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz1* and the principles about costs. There is the recognition in the judgment that the Authority is able to set its own procedure and has since its inception held to some basic tenets when considering costs.

[3] Mr Cahill attached invoices from the applicant's three earlier representatives before he was instructed. He relies on a letter headed "without prejudice save as to costs" dated 18 July 2016 from the applicant's solicitor at that time. That letter should not have referred to anything that happened in mediation however I have had that aspect blacked out and considered the advice the applicant would be prepared to settle for compensation for \$25,000 which would include both compensation and lost wages. The letter also refers to "...our client claims the sum of X in terms of her outstanding costs" without specifying an amount for costs.

[4] Mr Cahill submits that after that offer was made and rejected the costs incurred by the applicant were \$13,490.46 GST inclusive.

[5] Mr Cahill attached his own invoice for costs being 33.3% of the sum awarded by the Authority up to the sum of \$15,000 and 15% of any sum awarded over \$15,000 and a base fee of \$1,000 for disbursements and \$71.56 filing fee (that seemed to be refunded). Mr Cahill submits that the applicant ought to be awarded all her legal costs incurred since the personal grievance was raised on 10 March 2016 to the date of determination. Mr Cahill submitted that if the Authority did not award full costs a reasonable contribution to costs incurred was sought.

The respondent's submissions

[6] Ms Shaw on behalf of the respondent submits that whilst the Authority found the applicant was unjustifiably dismissed it found that the redundancy was genuine and that a significant portion of the hearing related to arguments about the genuineness of the redundancy.

[7] Ms Shaw submits that the investigation meeting lasted less than one full hearing day with the daily tariff being \$4,500 and that those factors would mean it would be unfair for an award of costs to be made in excess of the daily tariff.

[8] Ms Shaw submits taking all matters into account an appropriate award for costs would be \$3,000.

Determination

[9] I have firstly considered whether the offer to settle in the nature of a Calderbank offer in the letter of 18 July 2016 for \$25,000 should be taken into account. The applicant was awarded the sum of \$13,071 for reimbursement of lost wages and \$10,000 for compensation.

[10] I note firstly that the offer to settle, although made after mediation, was made about six months before the statement of problem was lodged with the Authority on 19

January 2017. There is no information provided to support the offer to settle was repeated after that time. The respondent therefore was being asked to consider an offer in the nature of a Calderbank offer without knowing what the claim was against it.

[11] There is a more fundamental issue that arises. A Calderbank offer, to be relevant to the assessment of costs, must be clear and transparent – *Shanks v Agar (t/a Rod Agar & Co)*.² The Calderbank offer does not specify the amount of costs sought leaving it unclear what the offer actually is. I find that the offer was insufficiently clear to be relevant to an assessment of costs.

[12] Ms Shaw in her submission states that the investigation meeting was less than a full day however my minute book reflects a start time of 9.30am and a finish time of

4.45pm. A timetable was then set for an exchange of submissions.

[13] I find that an appropriate assessment of costs should be on the basis of the daily tariff for this matter which is \$4,500 because the statement for problem was lodged after 1

August 2016.

[14] Whilst the Authority found the redundancy was genuine I do not find it appropriate to reduce the daily tariff on this basis. There was a concern about an ulterior motive and the Authority, whilst not finding it made out as to whether the redundancy was genuine, it did find that there were other motivating factors in not appointing the applicant to the remaining role and concluded the dismissal was unjustified. I do not find good reason to increase or decrease the daily tariff. It appears the filing fee has been refunded and I am not satisfied from the disbursements that they are those in a true sense involving payment of money to a third party rather than normal office overheads that are not usually the subject of reimbursement in the Authority.

[15] Vetlife Limited is ordered to pay costs to Kasia Chapman –Labecka in the sum of \$4,500.

Helen Doyle

Member of the Employment Relations Authority