

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2019] NZERA 250  
3030672

BETWEEN

TERRY COYLE  
Applicant

A N D

GAVIN LADBROOK  
Respondent

Member of Authority: Peter van Keulen

Representatives: Robert Morgan, advocate for the Applicant  
Timothy Jackson, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 26 March 2019 from the Applicant  
9 April 2019 from the Respondent

Date of Determination: 30 April 2019

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**COST DETERMINATION OF THE AUTHORITY**

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**The substantive determination**

[1] In a determination dated 19 February 2019<sup>1</sup>, I determined that Gavin Ladbrook, trading as Sandblasting & Spraypainting Services, had unjustifiably dismissed Terry Coyle and I awarded remedies to Mr Coyle.

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<sup>1</sup> [2019] NZERA 86

[2] In my determination I reserved costs in order to give the parties an opportunity to try to resolve the question between them. The parties have been unable to agree and now Mr Coyle seeks costs.

### **Application for costs**

[3] Mr Morgan on behalf of Mr Coyle, says:

- (a) Costs should follow the event and the Authority should award costs to Mr Coyle.
- (b) The costs award should be based on the daily tariff for two part days of investigation meeting.
- (c) The costs award should then be increased for additional work caused by Mr Ladbrook's conduct of this matter.

[4] Mr Jackson on behalf of Mr Ladbrook says:

- (a) Mr Coyle was only partly successful with his claim so any costs award should be reduced to reflect this.
- (b) Mr Coyle's conduct whilst employed, which justified his dismissal, should sound in a further reduction in any costs awarded.

### **Analysis**

#### *Costs in the Authority*

[5] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the Employment Relations Act 2000. The principles and approach adopted by the Authority in respect of this power are outlined in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*<sup>2</sup> and other relevant Employment Court and Court of Appeal decisions<sup>3</sup>.

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<sup>2</sup> *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808

[6] I have applied these principles when assessing Mr Coyle's application for costs.

*Costs for Mr Coyle*

[7] In this case, costs should follow the event and as Mr Coyle was successful with his unjustified dismissal claim he is entitled to an award of costs.

*Daily tariff*

[8] The next decision is whether I should follow the normal practice of the Authority when setting costs, which is applying the daily tariff, being a set amount for each day of the investigation meeting.

[9] In this case, there is no reason for me to depart from the normal practice in the Authority and therefore I will apply the daily tariff.

*Length of the investigation meeting*

[10] The investigation meeting in this matter took place over two part days. First, I held an investigation meeting where the parties and all of the witnesses attended. That meeting took just over two hours. In the course of questioning the witnesses, it became clear to me that I needed to hear from another employee of Mr Ladbrook who was not present at the investigation meeting. So, secondly, a telephone conference was subsequently held in which I heard evidence from this additional witness. That telephone conference call took less than one hour.

[11] In total then the investigation into this matter took approximately three hours, which is half of one full day of an investigation meeting. Therefore my starting point in applying the daily tariff is that the award of costs for Mr Coyle should be \$2,250.00, being one half of the daily tariff.

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<sup>3</sup> *Blue Star Print Group (NZ) Ltd v. Mitchell* [2010] NZCA 385, *Booth v. Big Kahuna Holdings Ltd* [2015] NZEmpC 4, *Stevens v. Hapag-Lloyd (NZ) Ltd* [2015] NZEmpC 28, *Davide Fagotti v. Acme & Co Ltd* [2015] NZEmpC 135, *GSTech Limited v A labour Inspector of MBIE* [2018] NZEmpC 127

*Adjusting the daily tariff*

[12] The daily tariff can be adjusted for various reasons - the factors relevant to the consideration of the increase or decrease of the daily tariff include:

- (a) Costs awards in the Authority will be modest;
- (b) It is open to the Authority to consider whether all or any of the parties' costs were unnecessary or unreasonable;
- (c) Costs are not to be used as a punishment or an expression of disapproval of a party's conduct although conduct which increases costs unnecessarily can be taken into account;
- (d) Without prejudice offers can be considered;
- (e) Impecuniosity of the other party may be relevant;
- (f) A decision on quantum should be also in line with principle and not determined arbitrarily, bearing in mind the equity and good conscience jurisdiction of the Authority.

[13] Mr Morgan seeks an increase to the daily tariff because he says Mr Ladbrook's failure to follow the correct process disadvantaged Mr Coyle and added to the dispute.

[14] I am not satisfied that the behaviour complained of by Mr Morgan is behaviour that caused an unnecessary increase in costs, rather it appears to be behaviour that gave rise to the grievance which I have determined. This is not behaviour that supports an increase in the daily tariff.

[15] Mr Jackson seeks a decrease to the daily tariff because he says Mr Coyle was only partly successful with his unjustified dismissal claim, as the dismissal was substantively justified. Mr Jackson also submits that Mr Coyle's contribution, insofar as he had performed badly at work and had several warnings for this poor performance and conduct, should be recognised when awarding costs.

[16] I am not satisfied that these factors justify a reduction in the daily tariff:

- (a) I determined that Mr Ladbrook unjustifiably dismissed Mr Coyle, so Mr Coyle was successful with his claim. Further, there were no additional and separate claims that Mr Coyle lost.
- (b) In my determination, I found Mr Coyle had not contributed to the process that led to his dismissal being unjustified. And, in any event contribution is a matter for remedies and not for costs assessment.
- (c) Mr Coyle's behaviour, which substantively justified his dismissal, did affect the remedies I awarded. However, this behaviour is not a relevant factor to consider when assessing costs.

[17] Overall, I conclude that neither party acted in a way that justifies an increase or decrease to the daily tariff.

#### *Conclusion*

[18] I award costs to Mr Coyle based on the daily tariff for half of a one-day investigation meeting, being \$2,250.00.

#### **Order**

[19] Mr Ladbrook is to pay Mr Coyle \$2,250.00 as a contribution to his costs in this matter.

Peter van Keulen  
Member of the Employment Relations Authority