

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2015] NZERA Christchurch 175
5503866

BETWEEN

TINA CURRY
Applicant

A N D

ISS HOLDINGS NZ LIMITED
Respondent

Member of Authority: Helen Doyle

Representatives: Anna Oberndorfer, Advocate for the Applicant
Jo Douglas, Counsel for the Respondent

Submissions Received: 23 October 2015 from the Applicant
11 November 2015 from the Respondent

Date of Determination: 17 November 2015

COSTS DETERMINATION OF THE AUTHORITY

A I order ISS Holdings NZ Limited to pay to Tina Curry costs in the sum of \$7000 together with disbursements for flights and reimbursement of the filing fee in the combined sum of \$627.44.

Substantive Determination

[1] In my substantive determination dated 12 October 2015 I found in favour of the applicant and ordered payment of compensation for grievances of unjustified action causing disadvantage and unjustified dismissal and a penalty for a breach of good faith.

[2] I reserved the issue of costs and have now received submissions from Ms Oberndorfer and Ms Douglas.

The applicant's submission

[3] Ms Oberndorfer refers to the basic tenets the Authority has held to when considering costs in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*¹. These principles were held by the full Court of the Employment Court to be appropriate to the Authority and consistent with its functions and powers.

[4] Ms Oberndorfer recognises in her submissions that the Authority has a discretion as to whether costs are awarded and that costs usually follow the event. Ms Oberndorfer submits that the respondent's failure to acknowledge any element of the redundancy process was flawed or otherwise prevented the matter being resolved and settled in a way that reduced costs.

[5] Ms Oberndorfer submits that actual costs incurred by the applicant were \$11,850.00 and the applicant seeks uplift to the usual daily tariff for two full days for a contribution towards her costs in the sum of \$7,900.

[6] Ms Oberndorfer also seeks flight costs incurred for travel for one witness from Invercargill to Christchurch and return for the investigation meeting in the sum of \$555.88 in accordance with an attached statement and the filing fee of \$71.56.

The respondent's submission

[7] Ms Douglas submits that the applicant has not made a case for uplift to the usual tariff where the case was investigated over two days and the usual tariff is \$3,500 per day.

[8] Ms Douglas refers to the principles in *Da Cruz* including the principle that costs are not to be used as a punishment or an expression of disapproval of the unsuccessful party's conduct although conduct that increased costs unnecessarily can be taken into account in inflating or reducing an award.

[9] Ms Douglas submits that it is inappropriate for Ms Oberndorfer to refer to matters that may touch on the mediation process. Ms Douglas submits the case was conducted efficiently by the respondent with the respondent preparing and bearing the cost of the bundle of the document and that submissions were prepared in advance and delivered on the day of the meeting.

¹ [2005] 1 ERNZ 808

[10] Ms Douglas submits that the applicant's conduct of the case added to the cost because Ms Oberndorfer advised the day before the investigation meeting that two of her witnesses would not be able to appear as they could not afford to fly. Ms Douglas submits that time was taken out from preparing for the hearing to deal with the application and that the case was prepared on the basis of a witness who did not appear. Ms Douglas submits that a cost award of no more than \$5,000 should be made in favour of the applicant.

Determination

[11] The Authority exercises a discretion as to whether costs are awarded, and if so in what amount. The discretion must be exercised in accordance with principle and not arbitrarily.

[12] The starting point is that costs generally follow the event and there is no good reason to depart from that principle in this case. The applicant is entitled to costs.

[13] The Authority investigation took place over two full days, which included the presentation of closing submissions. The notional daily rate for costs in the Authority is \$3,500 per day.

[14] I find that the appropriate starting point for costs is \$7000. The next consideration is whether there should be any adjustment to that sum.

[15] There was nothing in the conduct of either party at the investigation meeting that increased costs. The respondent prepared a bundle of documents which was helpful. Full submissions were presented at the end of the evidence. Ms Douglas would have incurred some limited costs in dealing with a last minute application to take the evidence of two witnesses who lived outside of Christchurch by telephone. The application was declined by the Authority as the statements of evidence indicated significant credibility issues. One witness, who lived in Invercargill, did in fact appear the next day and gave evidence so any preparation for cross examination was a necessary cost. The other witness did not appear, but I do not find that preparation for that witness for cross examination when viewed overall in this matter should result in a decrease to the daily tariff.

[16] I do not find that the fact the matter did not resolve is a factor that should increase costs. The parties attended mediation before the Authority became involved.

[17] I am not persuaded that there should be any adjustment to the daily tariff in this case.

[18] I turn now to disbursements. I find that the claim for reimbursement for the flights for the applicant's witness from Invercargill is reasonable in the sum of \$555.88 together with reimbursement of the filing fee of \$71.56.

[19] I order ISS Holdings NZ Limited to pay to Tina Curry costs in the sum of \$7000 together with disbursements for flights and reimbursement of the filing fee in the combined sum of \$627.44.

Helen Doyle
Member of the Employment Relations Authority