



New Zealand Employment Relations Authority Decisions

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Dams v Powerbeat International Ltd AA 256A/07 (Auckland) [2007] NZERA 826 (9 November 2007)

Last Updated: 23 November 2021

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 256A/07 AEA934/05

BETWEEN RONALD DAMS

Applicant

AND POWERBEAT INTERNATIONAL LIMITED

Respondent

Member of Authority: Alastair Dumbleton Determination: 9 November 2007

COSTS DETERMINATION OF THE AUTHORITY

[1] Upon concluding an investigation by issuing a determination to the parties, the Authority held that Mr Ronald Dams had raised a personal grievance claim with Powerbeat International Limited (“Powerbeat”) outside of the 90 day period stipulated by the [Employment Relations Act 2000](#) for this step to be taken by an employee aggrieved with the employer.

[2] In the same determination - dated 22 November 2006, under AA352/06 - the Authority decided an application made by Mr Dams for leave to raise his grievance outside of the 90 day period, made on the grounds of exceptional circumstances as provided by [s.115](#) of the Act. For various reasons set out in the determination the Authority held that exceptional circumstances did exist, and accordingly it granted leave to Mr Dams.

[3] Consequently, the Authority was required by [s.114\(5\)](#) of the Act to direct the parties to mediation, to enable them to try and mutually resolve the grievance.

[4] When Mr Dams advised that mediation had not achieved that purpose the Authority proceeded to consider the substantive grievance claims, and it issued a determination of those on 22 August 2007 (under AA256/07).

Resumption of the

investigation meeting was not required as evidence and submissions on all aspects of the employment relationship problem had been taken at the meetings held previously.

[5] The Authority determined that Mr Dams had been dismissed by Powerbeat on 24 August 2004 and that the dismissal had been unjustified.

[6] The remedies awarded to Mr Dams were 3 months’ contractual remuneration, to cover some of the loss in the

period that Mr Dams was left without employment, and compensation of \$8,500 under s 123(1)(c)(i) of the Act. Interest at the rate of 10.5% was ordered to be paid on the award for lost remuneration.

[7] The investigation meeting was held over the 3 days of 24 May, 1 and 9 November 2006, although on 1 November the meeting was brief and resulted in an almost immediate adjournment being granted at the request of Powerbeat. The completion of the meeting on 9 November did not require a full day. At the end of the meeting that day submissions were addressed on all the issues then before the Authority and also on the question of costs. Because the outcome of the investigation was not then known, costs submissions were necessarily made on a contingency basis.

[8] In its written determination of 22 August 2000, the Authority said the following about costs:

[69] I consider that in the result of this case Mr Dams is justly entitled to an award of some costs to cover his legal representation for this most protracted investigation. Costs will however be reserved to allow Ms Collins to advise the Authority of the amount of total billings to Mr Dams. At the time the written submissions were made [9 November] and since mediation, Mr Dams has been invoiced \$2,925 for her representation. Ms Collins anticipated that actual costs including disbursements would be higher. She may have 14 days to confirm the final costs by memorandum to the Authority. A further determination on that issue will then be given.

[9] Ms Collins duly provided a memorandum to the Authority on 3 September 2007, advising that the total of costs charged to Mr Dams, not including those for her mediation attendances, amounted to \$5,568.75 including disbursements.

[10] Those are very modest costs for this case and the many issues raised by it needing determination.

[11] In assessing what is a reasonable contribution to actual costs, the Authority has had regard to the fact that Mr Dams was totally successful in his claim of unjustified dismissal and was also found not to have been at fault himself, or to have contributed to the situation that gave rise to his grievance.

[12] The less than 2 days in total that the investigation meeting took does not truly reflect the halting progress from beginning to end of the investigation, before a determination could be issued.

[13] I have had regard to the judgment of the Full Court in *PBO Ltd v. Da Cruz* [\[2005\] NZEmpC 144](#); [\[2005\] ERNZ 808](#) and to the principles set out in it with regard to awards of costs for Authority investigations.

[14] Noted in particular is the approval given by the Court to the use of a notional daily rate as one means of fixing costs. Nearly 2 years ago when the Court issued the decision, research had shown that the majority of costs awards for a one day investigation meeting were in the range of \$2,000-2,500. On that basis alone, an award of \$3,500-4,000 in favour of Mr Dams would be justified.

[15] However merely looking at total time does not take account of the considerable activity in this case that occurred outside of the investigation meeting. An application of a notional rate to the hearing time would not do justice to the work involved in this case for the applicant's counsel, Ms Collins.

[16] Mr Dams should not be at a disadvantage by a costs award that does not reflect that his counsel provided her services economically and efficiently and as a result charged him a very reasonable and affordable fee for her work, making the personal grievance remedy an accessible one for him. The Authority, unfortunately, frequently finds that several times this amount of costs has been charged for cases of similar length and complexity. An award of a higher percentage of total costs may be the result in cases like this, where costs have been kept down to what is reasonable and what is necessary.

[17] I consider that a reasonable contribution to actual costs should be \$4,350. This also includes reasonable disbursements to cover such things as the filing fee of \$70, and the usual expenses of photocopying, transportation and car parking charges.

[18] Powerbeat International Limited is therefore ordered to pay \$4,350 to Mr Ronald Dams in costs, pursuant to clause 15 of Schedule 2 of the [Employment Relations Act 2000](#).

A Dumbleton

Member of the Employment Relations Authority
