

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 428
5332016

BETWEEN KATHRYN DRAWBRIDGE
 Applicant

AND KIWI X FARMERS LIMITED
 Respondent

Member of Authority: Robin Arthur

Representatives: Stan Austin for Applicant
 Rachel Petterson for Respondent

Submissions: 20 September 2011 from the Applicant
 and 28 September 2011 from the Respondent

Determination: 3 October 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination [2011] NZERA Auckland 363 the Authority found Kiwi X Farmers Limited (KXFL) unjustifiably dismissed Kathryn Drawbridge. KXFL was ordered to pay Ms Drawbridge lost wages, distress compensation and wage arrears.

[2] Costs were reserved with the parties encouraged to resolve that matter themselves. They were unable to do so and Ms Drawbridge sought the Authority's determination of costs.

[3] I had given a preliminary indication that costs would likely be determined on the basis of a notional daily rate, subject to the application of the principles discussed in *PBO v Da Cruz* [2005] ERNZ 808 and what the parties' memoranda might say.

[4] Ms Drawbridge sought an order for costs of \$9000 based on the notional daily rate applied to the one day required for the Authority investigation meeting and two days' preparation time. Her actual costs of representation were not stated in dollar

terms. No copies of her representative's invoices to her were provided. She was said to have "*incurred billable hours ... in excess of 75 hours*". That figure was said not to include time spent on aspects of Ms Drawbridge's wage claim which were not successful. It did include costs incurred because of a need to seek and serve summonses for two witnesses.

[5] KXFL's memorandum on costs accepted the notional daily rate of \$3000 as the amount it should pay. It had co-operated with a referral of the wage arrears issue to a Labour Inspector and was prepared to abide by the inspector's assessment, which was the outcome the Authority ultimately determined was appropriate. On that basis KXFL submitted it should not be liable for Ms Drawbridge's costs associated with preparation and additional time taken during the Authority investigation in unsuccessfully pursuing that issue.

[6] Ms Drawbridge's request for the costs of two days of preparation time relied on an Employment Court decision which had determined costs for an Authority investigation as well as a court hearing.¹ I do not accept the formula adopted in that case applied to the particular circumstances of the present matter or is mandatory in the Authority's own exercise of its statutory discretion on costs.

[7] However I do accept Ms Drawbridge incurred additional costs associated with seeking and serving summonses necessary for two witnesses – Geoff Watts and Monty Kora – who both had important evidence about whether a dismissal had occurred.

[8] An upward adjustment of the notional daily rate is appropriate for those costs. Applying the relevant principles endorsed by a full bench of the Court in *Da Cruz*, I consider no other factors require any further adjustment upward or downward of the notional daily rate.

[9] KXFL is ordered to pay Ms Drawbridge \$3500 as a modest and reasonable contribution to her costs incurred in successfully establishing her personal grievance of unjustified dismissal.

¹ *Chief Executive of the Department of Corrections v Tawhiwhirangi (No 2)* [2008] ERNZ 73.

[10] KFXL is also ordered to reimburse Ms Drawbridge for expenses totalling \$115.56. That sum comprises reimbursement of the \$71.56 fee she paid to lodge her application in the Authority and \$44 she had to tender as travelling expenses to the witnesses served with summonses.

Robin Arthur
Member of the Employment Relations Authority