

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2019] NZERA 140
3025851

BETWEEN

MARY JOY GARCIA
Applicant

A N D

SAXON APPLIANCES LIMITED
Respondent

Member of Authority: Peter van Keulen

Representatives: No appearance for applicant
Robert Thompson, advocate for the Respondent

Investigation Meeting: On the papers

Submissions Received: No submissions from the Applicant
20 February 2019 from the Respondent

Date of Determination: 11 March 2019

COST DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In a determination dated 30 January 2019¹, I dismissed Mary Garcia's claims against Saxon Appliances Limited.

[2] In my determination, I reserved costs in order to give the parties an opportunity to try to resolve the question of costs. The parties have been unable to agree costs and now Saxon Appliances seeks costs.

¹ [2019] NZERA 40

Process of the application for costs

[3] Saxon Appliances lodged its application for costs, in the form of cost submissions, in the Authority on 20 February 2019.

[4] The submissions were served on Ms Oberndorfer, the advocate for Ms Garcia. In line with my determination, Ms Garcia then had 14 days to respond to Mr Thompson's submissions.

[5] On 7 March 2019, Ms Oberndorfer advised the Authority that she did not have instructions to lodge submissions on costs on behalf of Ms Garcia. Nothing else has been received from Ms Garcia.

[6] I am satisfied that Ms Garcia was aware of the application for costs made against her. She was also aware, from my determination, that she had 14 days to respond, and she has not done so.

[7] In these circumstances, I can now proceed to deal with the costs application without having received submissions from Ms Garcia.

Application for costs

[8] Mr Thompson on behalf of Saxon Appliances, says:

- (a) Whilst costs are discretionary, costs normally follow the event and therefore the Authority should exercise its discretion and award costs to Saxon Appliances.
- (b) The costs award should be based on the daily tariff for a one day investigation meeting, being \$4,500.00
- (c) The costs award should then be increased for additional work caused by Ms Garcia's conduct of this matter.

Analysis

Costs in the Authority

[9] 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*² and other relevant Employment Court and Court of Appeal decisions³.

[10] I have applied these principles when assessing Saxon Appliances' application for costs.

Costs for Saxon Appliances

[11] In this case, costs should follow the event and Saxon Appliances is entitled to an award of costs.

Daily tariff

[12] 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.

[13] 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

[14] The investigation meeting in this matter took one day and the daily tariff for one day is \$4,500.00.

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

³ *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

[15] The daily tariff can be adjusted for various reasons including if a party's conduct has increased costs unnecessarily.

[16] Mr Thompson seeks an adjustment, but that adjustment is not to the daily tariff rate but rather he seeks an increase in the number of days the daily tariff is applied to, to represent the additional work created by Ms Garcia's conduct of this claim. He seeks an additional award of \$875.00 to reflect one quarter of a one-day investigation representing the additional work required.

[17] I think there is really no difference between applying the daily tariff for one day and then adjusting the tariff rate up by \$875.00 to reflect additional work and applying the daily tariff on an unadjusted basis to an additional one quarter of a day's investigation to reflect additional work. Either way I am required to assess if additional work was required because of Ms Garcia's conduct – how I quantify and/or apply the value of that additional work is simply the mechanics of the calculation.

[18] So, what I am required to do is assess if Ms Garcia's conduct of this matter increased costs unnecessarily, this being the applicable basis on which the daily tariff can be adjusted. Mr Thompson's submission is that Ms Garcia's conduct required:

- (a) Additional work in preparing a last-minute witness;
- (b) Submissions required in writing after the investigation meeting and then additional work because of submissions in reply from Ms Garcia;
- (c) Additional evidence from staff, due to the number of claims and allegations made by Ms Garcia.

[19] I have considered these submissions in light of Ms Garcia's conduct of this matter. I am not satisfied that Ms Garcia conducted this matter in a way that caused an unnecessary increase in costs.

[20] In my view, Ms Garcia's conduct in pursuing her claims, providing evidence and making submissions was not unusual or particularly onerous when compared to most Authority investigations.

[21] An increase in the daily tariff, or the number of days to which the tariff is applied, is not appropriate.

Conclusion

[22] I award costs to the Saxon Appliances based on the daily tariff for a one-day investigation meeting, of \$4,500.00.

Order

[23] Ms Garcia is to pay \$4,500.00 as a contribution to Saxon Appliances' costs in this matter.

Peter van Keulen
Member of the Employment Relations Authority