

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**[2013] NZERA Auckland 316  
5384769**

BETWEEN                      LEANNE HOFFMAN  
   Applicant

AND                              VALERIE EDWARDS  
   Respondent

Member of Authority:        Eleanor Robinson

Costs Submissions            11 July 2013 from Applicant  
   22 July 2013 from Respondent

Determination:                24 July 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] By determination [2013] NZERA Auckland 263 the Authority found that the Applicant, Ms Leanne Hoffman, had been unjustifiably dismissed by the Respondent, Ms Valerie Hoffman. Ms Hoffman was also awarded a sum of monies in respect of being paid at a rate below the minimum wage during the period when she had been employed by Ms Hoffman, and a penalty in respect of the non-provision of an employment agreement.

[2] In that determination costs were reserved in the hope that the parties would be able to settle this issue between them. Unfortunately they have been unable to do so, and the parties have filed submissions in respect of costs.

[3] This matter involved approximately one and a half days of an Investigation Meeting, with written submissions being submitted subsequent to that. Mr Taylor on behalf of the Applicant, citing actual costs of \$7,515.00, is claiming a contribution towards costs of \$5,250.00, which sum represents the normal daily tariff costs assessment in the Authority.

[4] In support of his application for the level of costs Mr Taylor highlights the fact that the Application was successful in three out of the five claims which she brought against the Respondent.

[5] Ms Singh, for the Respondent, submits that the Authority should reduce the normal daily tariff award to reflect the fact that the Applicant was only partially successful in her claims.

[6] In particular Ms Singh points out that whilst the Applicant was seeking remedies totalling \$34,038.70 not including penalties in respect of all the claims, the actual remedies awards made were for a significantly lower amount. Ms Singh submits that had the Applicant not claimed an exorbitant sum of monies as remedies, the matter may have resolved prior to an investigation meeting taking place, which would have significantly reduced the costs incurred by the parties.

[7] Ms Singh further submits that account should be taken of the fact that although the Respondent had come to the investigation meeting accompanied by witnesses to defend the total of 11 claims made by the Applicant, a number of these claims were withdrawn by the Applicant prior to determination, or were rendered void by the Applicant's own evidence during the Investigation Meeting, such that the Respondent incurred unnecessary defence costs.

[8] On the basis as set out in the Respondent's submissions, Ms Singh submits that the Applicant should not be entitled to a full costs award.

#### *Principles*

[9] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 which states:

#### ***15 Power to award costs***

*(1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.*

*(2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.*

[10] Costs are at the discretion of the Authority, as observed by the current Chief Judge Colgan in *NZ Automobile Association Inc v McKay*<sup>1</sup>.

[11] The principles and the approach adopted by the Authority on which an award of costs are made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>2</sup>. These principles include:<sup>3</sup>

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<sup>1</sup> [1996] 2 ERNZ 622

<sup>2</sup> [2005] 1 ERNZ 808

<sup>3</sup> Ibid at para [44]

*Costs are not to be used as a punishment or as an expression of disapproval of an unsuccessful party's conduct, although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award*

[12] It is also a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>4</sup> that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*<sup>5</sup> at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.

### **Determination**

[13] The normal rule is that costs follow the event and Ms Hoffman is entitled to a contribution to her costs.

[14] However I am minded that any conduct of the Applicant which had the effect of increasing costs is relevant to a consideration of the level of costs to be awarded. I consider that account should be taken of the level of remedies awarded and of the fact that a number of the claims which the Respondent had come prepared to the Investigation Meeting to defend had been withdrawn prior to determination.

[15] I accept that the Respondent had incurred costs in preparation for defending these claims and that this should be taken into account in setting the appropriate costs award in this matter.

[16] Accordingly, Ms Edwards is ordered to pay Ms Hoffman \$2,250.00 costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

[17] Ms Edwards is also ordered to reimburse Ms Hoffman the sum of \$71.56 in respect of the filing fee, and \$153.33 in respect of the hearing fee.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**

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<sup>4</sup> [2005] 1 ERNZ 808

<sup>5</sup> [2001] ERNZ 305