

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2013] NZERA Christchurch 52
5400294

BETWEEN

AMBERLEIGH
HOWE-THORNLEY
Applicant

A N D

THE SALAD BOWL LIMITED
Respondent

Member of Authority: M B Loftus

Representatives: Shayne Boyce, Advocate for Applicant
Randi Westphal, on behalf of the Respondent

Submissions Received: 12 February 2013 from the Applicant
7 March 2013 from the Respondent

Date of Determination: 8 March 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] On 1 February 2013 I issued a determination concluding Ms Howe-Thornley had a personal grievance in that she was unjustifiably dismissed. Costs were reserved.

[2] Normally the Authority will use a daily tariff approach when addressing a costs claim (refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808). The normal starting point is \$3,500 per day and from there adjustment may be made depending on the circumstances.

[3] The hearing took half a day which would, applying the above formula, mean a contribution in the order of \$1,750.

[4] However Ms Howe-Thornley seeks a greater amount. She asks I award \$2,616.25 plus disbursements of \$71.56 (the Authority's filing fee) which would see full recompense of her costs. The justification for the claim is *the Respondent's*

totally contumelious disregard of the laws surrounding employment in New Zealand....

[5] The response is (a) Ms Boyce operates on a contingency fee basis and case law therefore precludes me from making an award in her clients favour and (b) a response is pointless given the substantive decision has been challenged. Though not identically worded, similar arguments were presented through correspondence from both Ms Westphal and the advocate she has now retained.

[6] Dealing first with the assertion a submission is pointless given the challenge. Normal practice in the employment jurisdiction is to conclude all outstanding questions including costs pending an appeal or challenge (refer *Swales v AFFCO New Zealand Ltd* EmpC Auckland AC19/01, 23 March 2001) and this is normally done by the Authority (see *Sandilands v Chief Executive of the Department of Corrections* ERA Wellington WA67A/09, 10 September 2009). This recognises it is desirable the Court be in a position to dispose of all matters once a challenge has been made and the successful party's expectation the Authority's process has come to an end.

[7] The suggestion I can not make an award as Ms Boyce operates on a contingency basis also lacks merit. It may have validity if the amount involved was champertous and out of proportion to a normal and reasonable charge (see *Ranchhod v Auckland Healthcare Services Ltd* [2001] ERNZ 771) but is normally irrelevant in the employment jurisdiction (refer *Order of St. John v Grieg* [2004] 2 ERNZ 137 at paragraphs 93 and 94).

[8] In this case there can be no suggestion the amount being charged is excessive or unreasonable. Indeed, it is relatively light when compared to claims normally seen in the Authority for hearings of this nature and length, especially as there were a number of preliminary issues which required the representatives input.

[9] However the fact the amount charged is not, in my view, unreasonable, does not mean the amount sought will be granted. A costs award is a contribution and not full indemnification except in exceptional circumstances and where the type of behaviours discussed in *Bradbury v Westpac Banking Corporation* [2009] 3 NZLR 400 are present. That is not the case here. The argument pursued in justification is effectively punitive and such an approach is precluded by the principles enunciated in *PBO Ltd v Da Cruz*.

[10] In the circumstances, and given the lack of further argument as to why I should depart from the normal daily tariff, I shall apply it. The filing fee was a properly incurred disbursement and its recompense is a given.

[11] Therefore, and for the foregoing reasons, I order The Salad Bowl Limited to pay Ms Amberleigh Howe-Thornley the sum of \$1,821.56 (one thousand, eight hundred and twenty one dollars and fifty six cents) as a contribution toward the costs Ms Howe-Thornley incurred in pursuing her claim.

M B Loftus
Member of the Employment Relations Authority