

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 466  
5358430

BETWEEN SUZANNE JOHNSON  
Applicant

AND BAY OF PLENTY DISTRICT  
HEALTH BOARD  
Respondent

Member of Authority: K J Anderson

Representatives: S Austin, Advocate for Applicant  
G Bingham, Counsel for Respondent

Submissions Received: 27 July 2013 for the Applicant  
1 August 2013 for the Respondent

Determination: 10 October 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 28 June 2013,<sup>1</sup> it is recorded that Ms Johnson was partially successful with her claims. It was found that there were three valid personal grievances in that Ms Johnson was disadvantaged in her employment by unjustifiable actions by her employer. Pursuant to s 123(1)(c)(i) of the Employment Relations Act, Ms Johnson was awarded compensation of the total sum of \$6,000. The parties were invited to reach a resolution on the matter of costs but have not been able to do so. Written submissions have been received from both parties in anticipation of the Authority determining the matter.

[2] The applicant has incurred costs of \$10,803.10, including GST; plus the application fee paid to the Authority. The submissions for both parties acknowledge the principles set out *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*<sup>2</sup> and the daily

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<sup>1</sup> [2013] NZERA Auckland 271

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

tariff approach adopted by the Authority<sup>3</sup>. Ms Johnson asks the Authority to award the sum of \$7,000, and the application fee of \$71.56.

[3] The submissions for the Bay of Plenty District Health Board (the BOPDHB) ask the Authority to note the partial success achieved by Ms Johnson and attention is drawn to the fact that of the eight original claims advanced by her, three of the claims were not proceeded with, two were not upheld and the other three were only partially successful. The BOPDHB points to the finding of the Authority that there was some contribution by Ms Johnson to the circumstances giving rise to her personal grievances, and that this should be taken into account in a costs setting. However, the contribution by Ms Johnson has been taken into account when awarding remedies for the grievances and the Authority is not able to revisit that factor in a costs determination.

### **Determination**

[4] The investigation meeting took a day and a half. Therefore, applying the usual daily tariff approach, the base costs award would be \$5,250. The BOPDHB says that taking into account that Ms Johnson was only partially successful with her overall claims; the costs awarded should be reduced to \$1,400.

[5] A submission for the applicant is that it is accepted that three of the “unjustifiable warning” claims of Ms Johnson were not proceeded with, due to Authority giving a view at the investigation meeting that the relevant letters in question (from the BOPDHB to Ms Johnson), were not written warnings, but rather notification of on-going performance management issues. However, Ms Johnson submits that the BOPDHB never denied that the matters in question were warnings and all the preparation for the investigation meeting was on basis that there were still a further three “live” warnings. I accept that this is so and it was only upon the Authority espousing its view at the investigation meeting, that the BOPDHB subsequently accepted that the matters in question were not warnings.

[6] Nonetheless, I accept that the costs that would normally be awarded (\$5,250) should be discounted somewhat to reflect the partial success achieved by Ms Johnson.

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<sup>3</sup> Currently \$3,500 for each day of an investigation meeting.

Pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000, the BOPDHB shall pay to Ms Johnson the sum of \$4,500.00, plus the application fee of \$71.56, as a contribution to the costs incurred by her.

**K J Anderson**  
**Member of the Employment Relations Authority**