



- [3] Costs were reserved at the parties' request. The parties have subsequently been unable to agree costs.

### **The Company's Claim**

- [4] The Company says that as Ms Jones contributed to the circumstances which she found herself in and did not reasonably attempt to mitigate her circumstances in good faith costs should not be awarded to her.

- [5] The Company is a small family business which made a loss over the last financial year. Consequently, any costs and the humiliation award to Ms Jones realistically need to be distributed over a manageable payment period of 1 year.

### **Ms Jones' Costs Claim**

- [6] The claim Ms Jones did not reasonably attempt to mitigate her losses has already been taken into consideration by the Authority and no remedy for lost wages was awarded. This issue does not detract from the fact that Ms Jones was unjustifiably dismissed by the Company.

- [7] Many of the costs incurred by the Company arose out of their unjustifiably dismissing the applicant.

- [8] Ms Jones was ready and willing to settle this matter at various stages (copies of offers, which are not stated as without prejudice, are attached to the applicant's costs submission).

- [9] A standard order for costs for half to one day hearing is sought. It is unseemly for the Company to now be pleading poverty when the matter could have been settled for less than the amount the respondent chose to spend on opposing Mr Jones' claim.

### **Findings**

- [10] The Authority's discretion with which to award costs is now well settled and typically follow the event: *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.

- [11] A half-day investigation was undertaken.
- [12] I am satisfied there is no reason to depart from the well indicated principle that costs follow the event or the Authority's normal range of costs awards. Having regard to the above I am satisfied a costs award of \$1,500 for the investigation is appropriate in all the circumstances.
- [13] Without evidence as to the Company's financial circumstances other than that it is operating at a loss I am unable to measure what if any repayment period is appropriate. While reluctant to leave the matter to parties that have shown a consistent inability to settle matters on their own terms I am nonetheless obliged to leave this question to, if necessary, a compliance investigation. In the meantime the parties should do the obvious and make every effort to reach agreement on a repayment regime that is fair to them both; that is because, at least in part, the Company going into liquidation would not assist Ms Jones in any way

#### **Determination**

- [14] The Company is to pay Ms Jones as a contribution to her fair and reasonable costs the sum of \$1,500 (one thousand and five hundred dollars).

**Denis Asher**  
**Member of the Employment Relations Authority**