

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 112A/10
5166215

BETWEEN Fiona Kelly
 Applicant

AND Yupang (Helen) Wei t/a
 Rainbow Dairy, Foxton
 Respondent

Member of Authority: Denis Asher

Representatives: Mark Duston for Ms Kelly
 No submissions were received by or on behalf of Ms
 Wei

Submission received: 16 August 2010

Determination: 11 October 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 21 June 2010 (WA 112/10) I found in favour of Ms Kelly's claim that she had been unjustifiably constructively dismissed by the respondent, Ms Wei. Costs were reserved.

Ms Kelly's Costs Submissions Summarised

[2] In costs submissions received on 16 August counsel for the applicant, Mr Mark Duston, appended confirmation from the Legal Services Agency that Ms Kelly was in receipt of legal aid totalling \$3,854.26. Efforts to recover the monies awarded the applicant in the Authority's substantive determination and indicative costs of \$3,000 have been unsuccessful.

[3] The applicant seeks to recover all of her legal aid costs.

Discussion and Findings

[4] As is made clear above, no submissions have been received from Ms Wei. Mr Duston advises his correspondence to the respondent at the Rainbow Dairy, Foxton, has drawn no response. Communications from Authority support staff to the same address have similarly received no response.

[5] Ms Wei confirmed during the Authority's substantive investigation earlier this year, on 10 & 11 May, she is the owner of the Rainbow Dairy. No notice has been received from the respondent of any change of address and I am satisfied that, all relevant correspondence having been forwarded to an appropriate address, I can fairly and reasonably proceed to determine this costs application notwithstanding the absence of any submissions from Ms Wei.

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

[7] In my substantive determination I made the following observations:

I note here counsel's claim of legal costs of \$4,054.00 for Ms Kelly. For a two-day investigation this is a realistic claim provided a discounting is applied in respect of the benefit of progressing another applicant's claim at the same time.

In other words, and subject to detailed submissions, all up legal costs of approximately \$6,000 for the two applicants would appear realistic.

[8] Mr Duston has not provided any argument or basis to challenge that preliminary conclusion or any explanation for the differing legal aid figures he has provided. I am not aware of any reasons to vary the indicated approach.

[9] I am satisfied that, in all the circumstances, a costs award of \$3,000 against Ms Wei and a direction to pay the applicant's \$70 filing fee are entirely appropriate.

Determination

[10] Ms Wei is to pay to Ms Kelly as a contribution to her fair and reasonable costs \$3,000 (three thousand dollars) and the \$70 (seventy dollar) filing fee.

Denis Asher

Member of the Employment Relations Authority