

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2013] NZERA Christchurch 240
5387490

BETWEEN AROHA KERR
Applicant

A N D SHARNA LIMITED
Respondent

Member of Authority: M B Loftus

Representatives: Peter Moore, Advocate for Applicant
Robert Thompson, Advocate for Respondent

Submissions Received: 24 October 2013 from Applicant
20 November 2013 from Respondent

Date of Determination: 21 November 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] On 12 September 2013 I issued a determination concluding Ms Kerr had a personal grievance in that she was unjustifiably dismissed. Three further claims that may have led to the imposition of a penalty were unsuccessful.

[2] Costs were reserved and Ms Kerr, as the successful party, now seeks a contribution toward those she incurred.

[3] 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.

[4] The investigation took the better part of a day which, applying the above approach, would mean an award of approximately \$3,500.

[5] Notwithstanding greater costs, that is what Ms Kerr seeks and her claim relies on applying *PBO Ltd v Da Cruz*.

[6] Sharna contends a more reasonable award would be the \$2,000 it has already offered (and had rejected) on the basis;

- (a) Actual hearing time was approximately 6 hours as time was spent on attempts to settle;
- (b) The case was a simple one which required minimal preparation. If that is considered incorrect any complexity there may have been arose as a result of the applicant adding penalty claims that had little chance of success;
- (c) Sharna had a level of success; and
- (d) Sharna is incapable of paying a substantial award.

[7] Sharna's argument fails to sway me. 6 hours is the better part of a day and simple or not, there were multiple claims which had to be addressed. Against the argument Sharna had a level of success, I note two points. First, and while Ms Kerr failed to attain remedies in respect to three of her claims, she was actually successful to the extent she established a breach on Sharna's part in respect to two of them. It was just that Sharna's actions were not of the type warranting the remedy sought – a penalty. Second, I note it is improper to adopt a scorecard approach where the issues are intrinsically intertwined as they were here (*Bourne v Real Journeys Ltd* [2012] NZEmpC 2). The primary focus was the dismissal claim and in that respect Ms Kerr was successful.

[8] There is then the argument of impecuniosity. Such argument must be supported yet Sharna failed to do so despite Mr Thompson's efforts to get the information which delayed the filing of his submissions. In any event I note that if the claims have validity this order can be amended to allow instalment payments should the parties be unable to agree a schedule. Sharna will, however, be required to support any such application with evidence of its situation.

[9] Sharna also challenges the claim regarding actual costs by arguing it is unsupported. There are no invoices etc. The argument is however undermined to

some extent by advice its own cost exceeded the daily tariff but, in any event, I struggle to consider the claim unreasonable – the daily tariff is being sought by a reputable representative.

[10] Ms Kerr was successful with her primary claim. It is well accepted costs follow the event and a successful party can expect a contribution toward the costs incurred in attaining that success. Having considered the submissions I conclude it appropriate to apply the tariff sought.

[11] I therefore order the respondent, Sharna Limited, to pay the applicant, Ms Aroha Kerr, the sum of \$3,500 (three thousand, five hundred dollars) as a contribution toward costs.

M B Loftus
Member of the Employment Relations Authority