

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2016] NZERA Auckland 148  
5555042

BETWEEN                      KIM LA  
   Applicant  
  
A N D                              ALPHA LABORATORIES (NZ)  
   LIMITED  
   Respondent

Member of Authority:      Anna Fitzgibbon  
  
Representatives:              Greg Bennett, Advocate for Applicant  
   Douglas Mitchell, Counsel for Respondent  
  
Submissions Received:      2 May 2016 from Applicant  
   13 May 2016 from Respondent  
  
Date of Determination:      17 May 2016

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**COSTS DETERMINATION OF  
THE EMPLOYMENT RELATIONS AUTHORITY**

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- A.      Alpha Laboratories (NZ) Limited is ordered to contribute \$7,000 towards Ms Kim La's costs which are to be paid within 14 days of the date of this determination.**

**The substantive determination**

[1]      In a determination of the Authority dated 18 April 2016<sup>1</sup>, the Authority determined that:

- (a)      Ms Kim La's employment was affected to her disadvantage by the unjustifiable actions of Alpha Laboratories (NZ) Limited (Alpha).
- (b)      Ms La was unjustifiably dismissed from her employment by Alpha.

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<sup>1</sup>      [2016] NZERA Auckland 116

- (c) Ms La was to be awarded the sums of:
- (i) \$2,500 compensation for humiliation, loss of dignity and injury to feelings in respect of her unjustifiable disadvantages pursuant to s.123(1)(c)(i) of the Employment Relations Act 2000 (the Act);
  - (ii) \$15,000 compensation under s.123(1)(c)(i) of the Act for hurt, humiliation, loss of dignity and injury to feelings in respect of her unjustifiable dismissal; and
  - (iii) reimbursement of lost salary.

### **Costs determination**

[2] A memorandum of costs was filed by Mr Bennett on behalf of Ms La seeking a costs award of \$10,500. Ms La's actual costs were \$13,748.83.

[3] Mr Mitchell, for Alpha opposes Ms La's claim for costs which exceed the Authority's normal daily tariff for a 2 day investigation meeting. Mr Mitchell concedes that as the investigation meeting took two full days, an appropriate award of costs would be \$7,000.

### **The Authority's power to award costs**

[4] The Authority's power to award costs arises from Schedule 2, clause 15 of the Act. This confers a wide discretion on the Authority to award costs on a principled basis.

[5] Both representatives referred the Authority to the Full Employment Court decision in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*<sup>2</sup>. The principles are so well established that there is no need for them to be repeated.

[6] The general principle is that costs follow the event, and I see no reason to depart from that in this case. Ms La was successful in her claims and should be awarded costs.

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<sup>2</sup> [2005] 1 ERNZ 808, para.44

[7] The Employment Court in *Carter Holt Harvey v. Eastern Bays Independent Industrial Workers Union & Ors*<sup>3</sup> observed that a notional daily tariff approach, which was to be adjusted in a principled way, was best suited to the Authority's unique jurisdiction. This approach has been affirmed by the Employment Court recently in *Fagotti v. Acme & Co Ltd*<sup>4</sup>. I adopt that approach.

[8] The normal starting point for costs in the Authority is \$3,500 per day.

[9] Mr Bennett for Ms La is seeking an uplift in the daily tariff for the following reasons:

- (a) Alpha failed to provide documents in a timely manner and certain documents requested were never provided with no explanation.
- (b) This increased the costs for Ms La.
- (c) Ms La was completely successful in her claims; and
- (d) The investigation meeting covered two full days.

[10] The only issue that I can discern from Mr Bennett's submissions in support of an uplift in costs is his claim that documents were not provided by Alpha in a timely manner and a number of documents requested were not provided at all. The Authority has not been provided with any details in support of this submission.

[11] The investigation meeting was initially held on 28 October 2015. However, the investigation meeting had to be vacated after a short period of time because it became clear that Ms La was not able to understand questions being asked of her, even with the assistance of an interpreter.

[12] This was due in my view to Mr Bennett's failure to ensure that the Authority was aware of the particular language requirements of Ms La. This was a matter within Mr Bennett's control and his duty as Ms La's representative. This caused inconvenience to the Authority and presumably extra costs were incurred by Alpha.

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<sup>3</sup> [2011] NZEmpC 13

<sup>4</sup> [2015] NZEmpC 135

[13] The Authority is of the view that costs should be in accordance with the Authority's normal daily tariff of \$3,500 per day. The investigation meeting took two entire days.

[14] Accordingly, I order costs of \$7,000 to be paid by Alpha to Ms La within 14 days of the date of this determination.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**