

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 274
5549325

BETWEEN

GAY VALDA LAURIE
Applicant

A N D

PLANTS NORTH LIMITED
and FLOWER FEVA LIMITED
Respondents

Member of Authority: Anna Fitzgibbon

Representatives: Sally Leftley, Representative for the Applicant
Damian Luiten, Director of both Respondents

Submissions Received: 21 August 2015 from the Applicant
04 September 2015 from the Respondent

Date of Determination: 10 September 2015

COSTS DETERMINATION OF THE AUTHORITY

- A. Plants North Limited is ordered to contribute \$3,500 towards Ms Laurie's costs which are to be paid within 14 days of the date of this determination.**

The substantive determination

[1] In an oral determination of the Authority on 13 August 2015 which was issued in writing on 14 August 2015¹ the Authority determined that:

- Ms Laurie was unjustifiably dismissed by Plants North Limited;
- Plants North Limited was to pay Ms Laurie holiday pay of \$3,600 gross, two weeks wages in lieu of notice amounting to \$726.75 gross

¹ [2015] NZERA Auckland 245

and bereavement leave of \$331.50 gross (such sums totalling \$4,658.25 gross) within 14 days of the date of the determination;

- The equivalent of 3 months wages in lost wages totalling \$4,723.88 gross within 14 days of the date of the determination, and;
- Compensation of \$10,000 for distress suffered by Ms Laurie pursuant to s.123(1)(c)(i) of the Employment Relations Act 2000 (the Act).

Costs determination

[2] A memorandum of costs was filed by Ms Leftley on behalf of Ms Laurie seeking a contribution of \$5,462.78 in costs. Ms Leftley has provided a breakdown of costs incurred by Ms Laurie and supporting invoices.

[3] Ms Leftley has included in her costs claim, costs of \$1,628.51 associated with attendance up to and including at mediation. Ms Leftley accepts mediation costs are not normally considered by the Authority. However, Ms Leftley says “... *the reality is that the Applicant was forced to pursue this matter for her own financial security, given the sudden and absolute loss of income...*”.

[4] Mr Luiten opposes Ms Laurie’s claim for costs. Mr Luiten says he understood Flower Feva Limited was Ms Laurie’s employer and that this explains the delay in paying Ms Laurie. Mr Luiten seeks that costs lie where they fall.

[5] 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.

[6] The principles guiding the Authority’s approach to costs are set out by the Full Employment Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*². The principles have been recently considered and affirmed by the Employment Court in *Fagotti v Acme & Co Limited*³.

[7] The following principles highlighted in *PBO* are particularly relevant to this case, namely:

² [2005] 1 ERNZ 808

³ [2015] NZEMPc 135

- There is a discretion as to whether costs should be awarded and as to the amount.
- Equity and good conscience is to be considered on a case by case basis.
- Costs are not to be used as punishment or an expression of disapproval of the unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account when inflating or reducing an award.
- It is open to the Authority to consider whether all or any of the parties' costs were unnecessary or unreasonable.
- Costs generally follow the event.
- "Without prejudice except as to costs" offers can be taken into account.

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

[9] Total costs incurred by Ms Laurie are \$5,462.78, some of which relate to mediation attendances. I am not inclined to award costs in respect of the mediation attendances. Promoting mediation as the primary problem solving mechanism is one of the stated objects of the Act; (s3(a)(v)). However, whether such costs should be awarded when parties have attended mediation has been left open by the Employment Court in *Fagotti*⁴ until a fully argued case in respect of the matter comes before it.

[10] The Employment Court in *Carter Holt Harvey v. Eastern Bays Independent Industrial Workers Union & Ors*⁵ 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. Again, this approach has been affirmed by the Employment Court in *Fagotti*⁶. I adopt that approach.

⁴ Paragraph 114

⁵ [2011] NZEmpC 13

⁶ Paragraph 109

[11] The normal starting point for costs in the Authority is \$3,500 per day see *Fifita (aka Bloomfield) v. Dunedin Casinos Ltd*⁷. This matter involved an investigation meeting of one full day.

[12] For the reasons above, I do not accept the argument advanced by Ms Leftley that there should be, in effect, an uplift in the costs to take in to account attendances at mediation.

[13] I do not accept Mr Luiten's submissions that costs should lie where they fall. Ms Laurie was wholly successful and is entitled as the successful party to an award of costs. Accordingly, I order Plants North Limited to contribute \$3,500 towards the costs of Ms Laurie. Costs are to be paid by Plants North Limited to Ms Laurie within 14 days of the date of this determination.

Anna Fitzgibbon
Member of the Employment Relations Authority

⁷ [2012] NZERA Christchurch 219