

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

**[2019] NZERA 529
3042132**

BETWEEN

DA-SOM LEE
Applicant

AND

PETER KWON
First Respondent

NAOMI KWON
Second Respondent

PETER & NAOMI LIMITED
Third Respondent

Member of Authority: Eleanor Robinson

Submissions received: 23 August 2019 from Applicant
9 September 2019 from Respondent

Determination: 12 September 2019

COSTS DETERMINATION OF THE AUTHORITY

[1] In determination [2019] NZERA 476 it was determined that the Applicant, Ms Da-Som Lee, had been constructively dismissed and unjustifiably disadvantaged by the Third Respondent, Peter & Naomi Limited.

[2] In that determination costs had been reserved in the hope that the parties would be able to resolve this issue between themselves. Unfortunately, they have been unable to do so, and both parties have filed submissions in respect of costs.

[3] The matter involved a half day Investigation Meeting

[4] The Applicant is seeking payment of all the legal costs she incurred in bringing her claim.

[5] The Respondent submits that it is more appropriate that costs are awarded at the usual tariff level in the Authority.

Principles

[6] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 (the Act). Costs are at the discretion of the Authority, as observed by Chief Judge Colgan in *NZ Automobile Association Inc v McKay*¹.

[7] The principles and the approach adopted by the Authority on which an award of costs is made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*² as confirmed in *Fagotti v Acme & Co Ltd*.³ .

Determination

[8] A tariff based approach is that usually adopted by the Authority, which has the discretion to raise or lower the tariff, depending upon the circumstances. For a half day investigation meeting the tariff would normally equate to \$2,250.00.

[9] Costs normally follow the event and whilst the Applicant did not have professional representation at the Investigation Meeting she is entitled to claim for legal costs where these have been properly incurred in respect of the Authority's process.

[10] I note from the invoices and explanation provided that some of the costs in respect of which reimbursement is sought are related to mediation and for applications for legal aid. In addition there are travel costs incurred by counsel. These are not costs which are normally awarded.

[11] However as observed the Applicant is entitled to an award of costs in respect of those legal expenses which have been properly incurred.

[12] I consider it appropriate to base the level of costs on the normal tariff in the Authority as at the date of filing and to take a half day investigation meeting as the starting point.

[13] Accordingly Peter & Naomi Limited is ordered to pay Ms Lee the sum of \$2,250.00 towards her legal costs.

Eleanor Robinson
Member of the Employment Relations Authority

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2015] NZEmpC 135 at [114]