

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 571
5356417

BETWEEN BETH AVONNE LYNCH
 Applicant

AND THE FARMERS TRADING
 COMPANY LIMITED
 Respondent

Member of Authority: K J Anderson

Representatives: The Applicant in person
 M Goldrick, Counsel for Respondent

Submissions received: 9 October 2013 and 6 December 2013 from Respondent
 5 November 2013 from Applicant

Determination: 13 December 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 13 September 2013,¹ the Authority found that the claims of the applicant could not be upheld. The parties were invited to resolve the issue of costs but have not been able to do so. Submissions on costs have been provided by the parties in anticipation of the Authority determining this matter.

[2] The respondent incurred expenses of \$15,153 (plus GST) and consistent with the current tariff based approach applied by the Authority, the respondent is seeking an award of costs of the sum of \$3,500 plus disbursements (as identified), of \$214.04.

[3] The submissions for Mrs Lynch are brief but a bank statement attached shows that as of 18 October 2013, Mrs Lynch has commitments to the bank of more than \$56,000. It appears that the only income that Mrs Lynch has is national superannuation as she remains unemployed. Mrs Lynch submits that in the event that

¹ [2013] NZERA Auckland 414

the Authority makes an award of costs to the respondent, then a “time payment” arrangement would have to be entered into. The submissions for the respondent acknowledge that this may be necessary but sought an opportunity to make further submissions about the level and regularity pertaining to any schedule of payments that the Authority may be of a mind to determine.

[4] The parties were informed on 13 November 2013 that the Authority had arrived at a preliminary determination that Mrs Lynch should be required to pay the sum of \$3,500 (plus disbursements of \$214.04) as a contribution towards the costs incurred by Farmers. The parties were invited to reach an agreement about an appropriate time payment arrangement but have not been able to do so.

[5] The further submissions for the respondent firstly urge that the Authority should simply issue a determination on costs without any reference to a time payment schedule, and then following *Gazeley v Oceania Group Ltd*,² leave the matter of the ability to pay to be considered in the event that an order for compliance with the costs determination is required. But I conclude that such an approach in this case would simply be postponing the inevitable; and would put the respondent to further and unwarranted expense, as well as subjecting the applicant to further and unnecessary stress. I prefer the other option put forward by the respondent whereby it is submitted that Mrs Lynch should pay the sum of \$50 per week until the costs order is satisfied.

Determination

[6] Assessing all of the circumstances, pursuant to clause 15 of the Second Schedule of the Employment Relations Act 2000, I conclude that Mrs Lynch should make a contribution to the costs incurred by the respondent in its successful defence of her claims.

[7] Exercising the discretion available to the Authority in such matters, Mrs Lynch is ordered to pay to The Farmers Trading Company Limited the sum of \$3,714.04 on the following time payment basis:

² [2013] NZERA 67

Beginning on 20 January 2014, Mrs Lynch shall pay to the nominated bank account of The Farmers Trading Company Limited the sum of \$50.00 per week for 73 consecutive weeks; plus one further and final payment of \$64.04.

**K J Anderson
Member of the Employment Relations Authority**