

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2022] NZERA 83
3092792

BETWEEN DANIEL MAINWARING
Applicant

AND RAC GROUP LIMITED
Respondent

Member of Authority: David G Beck

Representatives: Paul Mathews, advocate for the Applicant
Robert Thompson, advocate for the Respondent

Investigation Meeting: On the papers

Submissions Received: 14 February 2022 from the Applicant
2 March 2022 from the Respondent

Date of Determination: 14 March 2022

COST DETERMINATION OF THE AUTHORITY

The Determination

[1] On 21 January 2022 the Authority issued a determination finding that:

- (a) Daniel Mainwaring was unjustifiably dismissed by RAC Group Limited.

- (b) In the circumstances, RAC Group Limited must pay Daniel Mainwaring:
- (i) \$7,200 pursuant to s 123(1)(c)(i) Employment Relations Act 2000; and
 - (ii) \$5,635 (gross) lost wages pursuant to s 123(1)(b) Employment Relations Act 2000.

[2] The parties were asked to explore resolving costs by agreement but failed to do so.

Submissions for Daniel Mainwaring

[3] Mr Mathews' brief submission highlighted that in addition to a one-day investigation meeting, further costs were unreasonably incurred for an additional investigation meeting that was conducted to allow RAC Group's advocate to test additional documentary evidence Mr Mainwaring provided to support his claim for remedies. Mr Mathews traversed what he saw as RAC Group's obstructive and delaying tactics adopted after Mr Mainwaring lodged his personal grievance on 4 February 2020, in support of a costs uplift above the daily tariff-based approach the Authority usually adopts. Mr Mathews attributed the need for an additional investigation meeting to be partly the fault of RAC Group failing to disclose full wage and time records after being directed to do so by the Authority, and he suggested that further delays were occasioned by RAC Group's director deliberately obstructing the setting up of a timely second meeting that was conducted on-line and initially had to be abandoned due to connectivity issues. A costs contribution of \$6,650 was sought and reimbursement of the Authority application fee.

Submission from RAC Group Limited

[4] Mr Thompson, after traversing relevant authorities, suggested that scale costs for the one-day hearing of \$4,500 was an appropriate amount and that no further costs should be awarded for any perceived delaying tactics. Mr Thompson noted that the second investigation meeting was convened because Mr Mainwaring failed to produce additional documentation in support of his remedies in a timely fashion necessitating the second meeting to provide his client with an opportunity to test the latterly disclosed evidence.

Costs principles

[5] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000. The discretion, it is accepted, is guided by principles set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*¹ including those costs are not to be used as a punishment or as a reflection on how either party conducted proceedings and that awards are to be made consistent with the equity and good conscience jurisdiction of the Authority.² These principles were confirmed as remaining appropriate in *Fagotti v Acme & Co Limited*. The principles include:

- a) There is a discretion as to whether costs will be awarded and in what amount.
- b) The discretion is to be exercised in accordance with principle and not arbitrarily.
- c) The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority.
- d) Equity and good conscience are to be considered on a case-by-case basis.
- e) Costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct although conduct which increases costs unnecessarily can be considered in inflating or reducing an award.
- f) It is open to the Authority to consider whether all or any of the parties' costs were unnecessary or unreasonable.
- g) Costs generally follow the event.
- h) Without prejudice offers can be considered.
- i) Awards will be modest.
- j) Frequently costs are judged against notional daily rates.
- k) The nature of the case can also influence costs, and this has resulted in the Authority ordering those costs lie where they fall in certain circumstances.

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¹ *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

² Section 160(2) Employment Relations Act 2000.

³ *Fagotti v Acme & Co Ltd* [2015] ERNZ 919 at [114].

Assessment

[6] Given that Mr Mainwaring succeeded in his unjustified dismissal claim and he incurred modest overall costs in what was a relatively complex matter, I intend to take a global approach that applies the above factors.

[7] I am not convinced by the contention that the overall conduct of the case by RAC Group should be a factor as that would be using costs as a punishment. I am also not persuaded by the suggestion of Mr Thompson that the second meeting was wholly due to Mr Mainwaring's lack of prior disclosure of documentation to support his case for remedies as RAC Group failed to adhere to a direction to disclose full wage and time records. In the circumstances, I find it is equitable on balance, to not award any costs for the second investigation meeting. I prefer Mr Thompson's submission that the normal daily tariff of \$4,5000 apply for the first day of the investigation meeting.

Award

[8] I order RAC Group Limited to pay Daniel Mainwaring the sum of \$4,500 as a contribution to legal costs and a further sum of \$71.56 to reimburse the filing fee incurred.

David Beck
Member of the Employment Relations Authority