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Mikendova v Medina Trading Limited (Auckland) [2018] NZERA 317; [2018] NZERA Auckland 317 (12 October 2018)

Last Updated: 18 October 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2018] NZERA Auckland 317

3022818

BETWEEN MONIKA MIKENDOVA Applicant

AND MEDINA TRADING LIMITED Respondent

Member of Authority: Eleanor Robinson

Submissions received: 8 October 2018 from Applicant and from Respondent

Determination: 12 October 2018

COSTS DETERMINATION OF THE AUTHORITY

[1] The Applicant, Ms Monika Mikendova, filed a Statement of Problem with the Authority on 23 November 2017 claiming constructive dismissal and unjustifiable disadvantage.

[2] By way of a Statement in Reply filed on 11 December 2017 the Respondent, Medina

Trading Limited (Medina) denied the claims made by Ms Mikendova.

[3] The investigation meeting was scheduled to be held on 27 September 2018 after witness statements had been filed and served and a common bundle of documents prepared and filed with the Authority.

[4] On 26 September 2018, the day prior to the scheduled investigation meeting, Ms Mikendova withdrew her claim from the Authority and the investigation meeting did not proceed.

[5] Medina is now seeking a contribution to costs in relation to this matter. Medina submitted that it incurred actual costs in the amount of \$6,290.80, of which \$1,945.80 was legal costs.

Determination

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) which states:

15 Power to award costs

(1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.

(2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[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*¹ as confirmed in *Fagotti v Acme & Co Ltd*.²

[8] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*³ that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*⁴ at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.”

[9] The Authority’s jurisdiction in respect of costs extends to a situation in which an Applicant elects to withdraw a proceeding at any stage prior to issue of determination. However, whilst I have discretion in considering whether or not a party’s costs were necessary or unreasonable, it is incumbent upon me that I approach the question of costs in a principled manner and not arbitrarily. The primary principle is that costs follow the event.

[10] I accept that in this case, whilst Medina did not incur the expense associated with attendance at an Authority investigation, it has nonetheless been put to some expense in taking steps to defend the claims made by Ms Mikendova at the scheduled investigation meeting. These steps have included the filing of witness statements and the full and active assistance of the advocate for Ms Mikendova in the compiling of the common bundle.

[11] Costs in the Authority are normally awarded on the basis of a daily tariff which equates to \$4,500.00 for a full day of an investigation meeting hearing.

¹ [\[2005\] NZEmpC 144](#); [\[2005\] 1 ERNZ 808](#)

² [\[2015\] NZEmpC 135](#) at [114]

³ [\[2005\] NZEmpC 144](#); [\[2005\] 1 ERNZ 808](#)

⁴ [\[2001\] NZCA 313](#); [\[2001\] ERNZ 305](#)

[12] In this case the matter was discontinued by Ms Mikendova prior to an investigation meeting taking place. Notwithstanding the Authority has the discretion to determine costs as appropriate.

[13] Having fully considered this matter, I consider it appropriate that the Applicant make a contribution to the legal costs of the Respondent.

[14] Accordingly Ms Mikendova is ordered to pay Medina the sum of \$1,900.00 towards its legal costs.

Eleanor Robinson

Member of the Employment Relations Authority