

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2019] NZERA 383
3041654

BETWEEN NICOLE MOORE
Applicant

AND THE WAREHOUSE LIMITED
Respondent

Member of Authority: James Crichton

Representatives: Adrian Plunket, advocate for the Applicant
Penny Swarbrick, counsel the Respondent

Submissions Received: 10 June 2019 from Applicant
29 May 2019 from Respondent

Date of Determination: 28 June 2019

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] By determination issued on 23 April 2019, I found that the applicant Ms Moore was entirely unsuccessful and I reserved the question of costs.

The claim for costs

[2] As the successful party, the respondent employer (The Warehouse) seeks an award of costs. Despite incurring costs well in excess of the daily tariff of \$4,500, The Warehouse seeks only the daily tariff amount.

[3] It is said the investigation meeting of the Authority took a full hearing day to deal with.

The response

[4] The submissions for Ms Moore proceed on the footing that she is indigent and therefore is unable to meet a normal award of costs. It is apparent from those submissions that Ms Moore has responded poorly to the intelligence that she is now responsible for a contribution to The Warehouse's costs in this matter.

[5] Moreover, it is suggested for Ms Moore that the investigation meeting was in fact complete within half a days' hearing time rather than a full days' hearing time as maintained by the employer. As a consequence the starting point for any award of costs is half a day of the daily allowance rather than the full day.

Discussion

[6] I agree with the submission of Ms Moore that the investigation meeting took only half a day so the correct starting point for the Authority to consider the imposition of costs, is a half a day rather than a full hearing day. On that basis, the starting point must be \$2,250.

[7] It is apparent from the submissions for Ms Moore that she has little disposable income and that she has not worked at all since her dismissal on 28 May 2018. It follows that she is in a difficult financial position and is therefore less able than a person enjoying a regular income to contemplate making a payment to contribute to the costs of The Warehouse.

[8] That said, it is none the less important that I reiterate that persons undertaking litigation in this Authority need to understand that it is not a risk free process and that if they are unsuccessful, with the present settings of cost fixing in the Authority, costs will often be imposed on the unsuccessful party. Parties must factor that into their calculations in deciding whether or not to proceed to litigation.

[9] However, in the particular circumstances of this case I have to accept that Ms Moore is unable to make any significant contribution to the costs of The Warehouse in successfully defending her claim.

[10] I think the proper course is to impose an appropriate figure which Ms Moore, in the normal course of events ought to have to contribute and then leave it to the parties to decide whether or not the matter is to be proceeded with further. Obviously The Warehouse can

make a decision not to seek to actually recover the monies so awarded; it is perfectly proper for the matter to rest on the footing that an award has been made in favour of The Warehouse but they choose not to pursue recovery of it.

[11] On that basis then I direct that Ms Moore is liable to The Warehouse in the sum of \$1,000, which amount is my estimate of what she ought to contribute to The Warehouse's costs having regard to the length of the hearing and her particular personal circumstances. I urge the Warehouse to exercise its discretion and not seek to recover that amount.

James Crichton
Chief of the Employment Relations Authority