

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 52  
5359705

BETWEEN PRATIMA NAND  
Applicant  
AND RICHMOND NZ TRUST  
LIMITED  
Respondent

Member of Authority: R A Monaghan  
Representatives: P Nand in person  
P Shaw, counsel for respondent  
Memoranda received: 26 November 2012 from respondent  
Determination: 15 February 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 26 October 2012 I found the parties had entered into a binding settlement of Ms Nand's employment relationship problem, and that the problem could not proceed to an investigation in the Authority.

[2] Costs were reserved, and the respondent has filed a memorandum on the matter.

**No response from applicant**

[3] The 26 October determination included a timetable for the lodging of memoranda on costs. According to the timetable Ms Nand was to file a response to the respondent's memorandum by the close of business on 10 December 2012. The Authority reminded her of that. When she said she was considering a challenge in the Employment Court and would await the outcome in the court before proceeding further, the Authority advised her that costs would be determined in the Authority even if the substantive determination was challenged. It gave an extension of time to 19 December 2012 to make submissions on costs.

[4] Ms Nand advised on 19 December that counsel had been instructed. Counsel advised on 21 December that he could not consider the issues, other than cursorily, until the third week in January 2013. The Authority did not hear further from counsel, and on 29 January 2013 it directed that any submissions on costs be lodged immediately. On 1 February 2013 counsel advised that he had not discussed costs with Ms Nand, but he would do so.

[5] As at the date of this determination, no further extension has been granted and there has been no further approach from counsel. Ms Nand has been given opportunities to respond, which have not been taken. The delays and failures to act on the Authority's directions have become unacceptable.

[6] Accordingly I proceed to determine the matter.

### **Determination**

[7] Counsel for the respondent sought an award of costs in the sum of \$1,725 (incl GST). This was the full amount charged for work done on the investigation into whether a binding settlement was reached, and was calculated as 6 hours x \$250/hour plus GST. Counsel cited the principles in *PBO Limited v da Cruz*<sup>1</sup> but asked the Authority to note that each case must be considered in the light of its own circumstances.

[8] Ms Nand's attempt to proceed in the face of the settlement was entirely without merit. She embarked on the attempt because she had second thoughts about a settlement she had originally been relieved to accept. It was not open to her to do that. Attempts to act in such a way undermine a system which emphasises the resolution of employment relationship problems by the parties themselves, and put the other party to costs it should not have to incur.

[9] The amount charged to the respondent was a fair and reasonable reflection of time spent reviewing relevant documents, research, preparing a statement of evidence and preparing submissions. Ms Nand's claim was so lacking in merit that she is

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<sup>1</sup> [2005] ERNZ 808.

ordered to pay to Richmond NZ Trust Limited the sum of \$1,500, being the costs incurred by the respondent less GST<sup>2</sup>.

R A Monaghan

Member of the Employment Relations Authority

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<sup>2</sup> Ref: *Entwisle v Dunedin City Council* [2002] 2 ERNZ 23, 39.