

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 320A/10
5303053

BETWEEN NATUREX LIMITED
Applicant

AND KATE ROGERS
Respondent

Member of Authority: Dzintra King

Representatives: Anthony Drake and Rosemary Childs, Counsel for
Applicant
Rodger Pool, Counsel for Respondent

Memoranda Received: 5 August 2010 from Respondent
20 September 2010 received from Applicant

Determination: 22 September 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] The applicant, Naturex Limited, was unsuccessful in its application to enforce a restraint of trade in the respondent's employment agreement.

[2] The parties have been unable to agree costs. The respondent's legal costs are in excess of \$15,000 and she seeks \$6,000. Mr Pool submitted that in a letter dated 2 May 2010 Ms Rogers offered to provide undertakings which, if accepted, given that the decision was that there was no proprietary interest therefore the restraint was unenforceable, would have obviated the need for the subsequent proceedings.

[3] The applicant submits that the offers made by the respondent should not be taken into account in a costs setting as the applicant did not seek a release from her restraint but offered instead to accept modifications.

[4] I agree there was a genuine dispute over the interpretation and meaning of the restraint provisions. However, had the applicant accepted the modifications proposed

there would have no need for the legal proceedings. The offers are matters which will be taken into account.

[5] The principles applicable to an award of costs in the Authority have been set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808. The Full Court set out a number of principles including that costs generally follow the event, are frequently judged against a notional daily rate and that awards will be modest.

[6] The applicant argues that the tariff should be adjusted downwards as the meeting took half a day.

[7] The preparation for a case that takes half a day is often similar to a case that takes a whole day.

[8] The applicant is to pay the respondent the sum of \$4,000.

Dzintra King

Member of the Employment Relations Authority