

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**CA 16A/07
5028774**

BETWEEN KERRY NELSON
 Applicant

AND MEADOW MUSHROOMS
 LIMITED
 Respondent

Member of Authority: Helen Doyle

Representatives: Kay Stringleman, Counsel for Applicant
 Anne Toohey, Counsel for Respondent

Investigation Meeting: 19 December 2006 at Christchurch

Submissions received: 7 March 2007 from Respondent
 3 April 2007 from Applicant

Determination: 7 May 2007

COSTS DETERMINATION OF THE AUTHORITY

The employment relationship problem

[1] In my determination dated 15 February 2007, I found in favour of the respondent that the applicant did not have a personal grievance. I reserved the issue of costs.

[2] Ms Toohey, on behalf of the respondent, lodged submissions seeking costs. Ms Stringleman, on behalf of the applicant, lodged a response to those submissions.

The submissions

[3] Ms Toohey, in her submissions, referred to the judgment of the full Court of the Employment Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* (unreported, 9 December 2005, AC2A/05) and the principles that were held in that case to be appropriate to the Authority and consistent with its functions and powers.

[4] Ms Toohey submits that the total fees for the respondent are \$10,749.38 and disbursements in the sum of \$232.19 which includes an amount of \$45.66 that had not been billed at the time Ms Toohey provided her submissions. Ms Toohey submits that the respondent should be entitled to at least 70% of its costs in the sum of \$7,687.10. Ms Toohey submits that the usual daily rate awarded in the Authority should be extended because the case was important and had wider ramifications for the respondent. She also submits that the applicant's case was unduly technical and unreasonable.

[5] Ms Stringleman submits that the Authority should allow costs to lie where they fall because the respondent is well resourced, the applicant was a long serving employee who genuinely believed that she had a personal grievance and had exercised her statutory right to have the matter tested. Ms Stringleman submits that the applicant had not raised a frivolous or vexatious grievance and it would be a burden on her if she was required to contribute to the respondents' costs.

[6] Ms Stringleman submitted that in the event the Authority does decide to make an award of costs, then the contribution to costs sought by the respondent is excessive in the circumstances because:

- There was nothing unusual about the case and there was not an overly large amount of written material;
- The applicant's approach to the matter did not result in the investigation being unnecessarily extended or becoming unduly complex;
- There was nothing in the proceedings which would justify an award in excess of the rate commonly applied;
- There were no excessively technical or legal issues;

- The investigation meeting took one day and the decision to visit the work site was the Authority's. The site visit lasted two hours including travel and did not require the respondent's counsel to prepare. It is therefore not appropriate for the respondent to suggest that this represents a further half day's formal investigation time and asks for costs on that basis;
- The applicant's case was not unreasonable.

Determination

[7] The unique nature and role of the Authority is recognised in *PBO Ltd*. There was reference in that judgment to the fact that the majority of costs awards in the Authority fall within the range of \$2,000-2,499 for a one day investigation although there may be factors that require an adjustment to that amount.

[8] I have considered Ms Stringleman's submission that costs should lie where they fall. It is a well established principle that the party which is not successful pays a contribution towards the costs of the successful party unless there are particular reasons to the contrary. The reasons advanced by Ms Stringleman would apply to many employment relationship problems and I do not consider they are reasons to depart from that principle. Costs will follow the event.

[9] Both parties contributed constructively to the investigation meeting which took one day. The Authority wanted to undertake a site visit and both representatives attended at the respondent's operation on the outskirts of Christchurch. I consider that there should be some allowance made in terms of costs for the site visit but I accept Ms Stringleman's submission that it should not be on the basis of full costs for a half day.

[10] The case was an important one for both parties. I am not satisfied that the arguments raised by the applicant about intent were so unreasonably technical so as to require an adjustment to the usual award of costs.

[11] I am of the view though that this is a matter that calls for an award at the higher end of the scale with an adjustment up of \$300 for the site visit. In all the circumstances of this case, the suitable award of costs is \$2,800 together with expenses in the sum of \$232.19.

[12] I order Kerry Nelson to pay to Meadow Mushrooms Limited the sum of \$3,032.19 being costs and expenses.

Helen Doyle
Member of Employment Relations Authority