

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 89
5401291

BETWEEN

JALEACE ORMSBY
Applicant

A N D

EFFEX HAIR AND BEAUTY
SALON LIMITED
Respondent

Member of Authority: James Crichton

Representatives: Emma Foster, Advocate for Applicant
No appearance for Respondent

Submissions Received: 21 February 2013 from Applicant

Date of Determination: 18 March 2013

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] The Authority issued a determination on the substantive matter dated 23 January 2013. The Authority found that Ms Ormsby had been unjustifiably dismissed but her contribution to the circumstances giving rise to the dismissal were significant and her compensation was reduced accordingly.

[2] Wages were also found to be owing but because of deficiencies in the record keeping of the employer, the Authority preferred to give the parties the opportunity of trying to resolve matters by agreement. In the result, there was no agreement and that matter, together with the question of costs, falls for decision in this determination.

[3] A final issue raised by the applicant in her submissions is a request that the Authority directs Effex Hair and Beauty Salon Limited (Effex) to supply the wage and time records currently apparently in the possession of Effex's accountant.

[4] The background to this aspect is that when the parties engaged after the substantive determination had issued, Effex maintained that its accountant had “*some form of wage record*” but it declined to release that information to Ms Ormsby’s advisers. That may well have been the dominant reason for the parties being unable to resolve the issue of wages by agreement.

The response

[5] Despite all appropriate efforts by the Authority’s support staff, there has been no submission from Effex. When the submission from Ms Ormsby’s advisers was received, it was promptly forwarded to Effex by email dated 21 February 2013 with the information that the matter was now being referred back to the Authority.

[6] The Authority has now waited fully three weeks since Effex received the other side’s submission but nothing from Effex has been forthcoming.

[7] In those circumstances, the Authority feels obliged to determine the matter on the basis of the evidence before it.

Determination

[8] The law in respect of the fixing of costs in the Authority is well settled. The principles include the fact that the granting of an award of costs is a discretionary matter, that costs usually follow the event, that costs in the Authority tend to be modest and that the Authority frequently adopts a daily tariff approach to costs fixing. In that latter regard, the daily tariff is currently set at \$3,500 which means that that figure is the starting point for a day’s hearing, and that figure can be adjusted either up or down depending on other factors such as complexity and the behaviour of the parties.

[9] This was a matter which was dealt with by the Authority in barely half a day of investigation time. That being the position, on normal principles, the claim for an award of \$1,500 in costs is entirely appropriate. There is nothing before the Authority that would encourage the Authority to either augment or diminish that sum and that being the position, the Authority now orders that Effex is to pay to Ms Ormsby the sum of \$1,500 as a contribution to her costs.

[10] In respect of the issue of wages due and owing, the Authority has already determined (para.[28] substantive determination) that the remedies be reduced by a figure of 50% as a consequence of Ms Ormsby's contribution to the circumstances giving rise to the grievance.

[11] Of course, that 50% reduction must apply to the contribution to wages as well as to the compensation. Three months wages at \$13.50 per hour for 20 hours per week amounts to \$3,510. Half of that (the 50% contribution) is \$1,755. Effex must make that contribution to Ms Ormsby.

[12] Given that Ms Ormsby was unjustifiably dismissed, and has lost remuneration as a consequence of the dismissal, she is entitled to three month's ordinary time remuneration suitably discounted by the effect of contribution: s. 128 Employment Relations Act 2000 (the Act) applied.

[13] Effex is therefore to pay to Ms Ormsby the following two amounts:

- (a) A contribution to legal costs in the sum of \$1,500; and
- (b) A contribution to lost wages in the sum of \$1,755.

James Crichton
Member of the Employment Relations Authority