

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 89A/09
5122560

BETWEEN JENNY OWLES
 Applicant

AND THE TRAVEL PRACTICE
 LIMITED
 Respondent

Member of Authority: Helen Doyle

Representatives: David Beck, Counsel for Applicant
 No appearance for Respondent

Determination: Submission from applicant received 15 July 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 26 June 2009 I found that the applicant had a personal grievance that she had been unjustifiably constructively dismissed from her employment with the respondent and I awarded her remedies for lost wages and compensation. I reserved the issue of costs.

[2] The respondent, aside from having a director attend a telephone conference with the Authority, did not provide a statement in reply or statements of evidence as timetabled during the telephone conference and did not attend the investigation meeting.

[3] Mr Beck provided submissions as to costs on behalf of the applicant and has attached to his submissions an itemised account of time spent on behalf of the applicant in this matter. He submits that actual costs, including the filing fee of \$70, are \$1,681.50 and that there should be award of full costs. He makes this submission on the basis that the applicant was completely successful and that the respondent

failed to respond to the applicant's grievance, attend mediation and to cooperate with the timetable directions made and did not appear at the investigation meeting.

[4] In exercising my discretion as to costs I am guided by the principles set out in the judgement of the Full Court of the Employment Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808.

[5] Costs awarded in the Authority are frequently modest and often on the basis of a notional daily rate with adjustments where required to avoid an over rigid approach and reflect the individual circumstances of the case. Costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct, although conduct which increases costs unnecessarily can be taken into account in terms of an award.

[6] This was not a complex matter. The investigation meeting itself took five minutes short of an hour. The applicant was present for an additional 15 minutes before the meeting started because I delayed the start of the meeting in the event the respondent may have been unavoidably delayed.

[7] A statement of evidence was prepared on behalf of the applicant and Mr Beck provided an oral closing submission at the end of the meeting. A brief cost submission was provided in writing. The fact that there was no compliance by the respondent with the Authority timetable and no appearance on behalf of the respondent at the investigation meeting, although most unsatisfactory, was not conduct that in all the circumstances I find can be said to have increased the costs to the applicant.

[8] I accept that costs should follow the event and that the applicant, as the successful party, is entitled to a contribution towards her costs. I do not conclude that this is a situation where, in the exercise of my discretion, I should order full costs be awarded. The starting daily rate in my view should be \$2,500 with adjustment in this matter given the short time required for the meeting of less than half a day and the fact the matter was not unduly complex.

[9] In all the circumstances, I am of the view that a fair and reasonable award of costs is the sum of \$1,000 together with the filing fee of \$70.

[10] I order The Travel Practice Limited to pay to Jenny Owles the sum of \$1,070 being costs and expenses.

Helen Doyle
Member of the Employment Relations Authority