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Panel Holdings Ltd v Paki (Auckland) [2007] NZERA 189 (28 August 2007)

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 232A/07 5071449 & 5078618

BETWEEN

AND

PANEL HOLDINGS LIMITED

Applicant in 5078618 Respondent in 5071449

PAANIA PAKI

Respondent in 5078618 Applicant in 5071449

Member of Authority: Representatives:

Dzintra King

Penny Swarbrick, Counsel for Panel Holdings Ltd Paania Paki

Determination:

28 August 2007

COSTS DETERMINATION OF THE AUTHORITY

[1] Panel Holdings Limited was successful in its claim against Ms Paki. Ms Paki did not appear at the hearing and her personal grievance was dismissed. Panel Holdings now seeks costs.

[2] Panel Holdings has incurred costs (excluding GST) as follows:

- • Legal fees \$13,368.75
- • Disbursements and filing fee \$595.55
- • Price Waterhouse Coopers fees \$15,654.98

[3] Panel Holdings also seeks \$10,000 for the cost of executive time in investigating the matter and attending to preparation for the hearing.

[4] No response has been received from Ms Paki regarding the matter of costs.

[5] Some of the legal fees incurred relate to mediation.

[6] Panel Holdings says it would not have had to incur any of these costs were it not for Ms Paki's unlawful activities.

[7] The Authority has the power to award costs pursuant to clause 15 Schedule 2 of the [Employment Relations Act 2000](#). In *PBO Ltd (Formerly Rush Security Ltd) v Da Cruz*, unreported, 9 December 2005, ARC87/04, Colgan CJ, Travis and Shaw JJ the

Court considered the use of a tariff by the Authority of between \$2,000 and \$3,000 per day. However, in that case the Court found there were good reasons to increase the costs beyond that tariff.

[8] Although the hearing itself was short, this was due to Ms Paki's failure to appear and does not reflect the considerable preparation necessarily undertaken to pursue the claim.

[9] The Authority must ascertain the reasonableness and necessity of the parties' costs and has a discretion as to whether should be awarded and the amount of those costs.

[10] Costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.

[11] The circumstances of this case are such that an increase in the tariff is justified. Ms Paki is to make a contribution of \$5,000 to the legal fees.

[12] Ms Paki is to pay \$595.55 for the company's disbursements and the cost of the filing fee.

[13] Ms Paki is to pay the costs of incurred by the company in obtaining the forensic accounting services of PriceWaterhouse Coopers to investigate her activities. These costs are \$15,654.98.

[14] As to the claim for executive time, while I can understand the applicant's chagrin, having examined the case law I am not convinced that there are grounds for an award in this case.

Dzintra King

Member of the Employment Relations Authority

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