

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 361  
5405559

BETWEEN PRASANNA PATEL  
Applicant  
  
A N D KANGNAI FOOTWEAR  
LIMITED  
Respondent

Member of Authority: Anna Fitzgibbon  
  
Representatives: Danny Gelb, Advocate for Applicant  
Ling Ke, Director of Respondent  
  
Submissions Received: 26 July 2013 from Applicant  
No submissions received from Respondent  
  
Date of Determination: 15 August 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A. Kangnai Footwear Limited is ordered to contribute \$6000 towards Ms Prasanna Patel's costs plus the filing fee of \$71.56, a total of \$6071.56.**

[1] In a substantive determination dated 08 July 2013<sup>1</sup> the Authority found Ms Patel had been unjustifiably dismissed by Kangnai Footwear Limited ("Kangnai"). A timetable was set for costs to be dealt with by an exchange of memoranda. On 26 July, Mr Gelb for Ms Patel, filed a memorandum as to costs which was served on the respondent, Kangnai. Kangnai had until 9 August to file a memorandum in response, but failed to do so.

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<sup>1</sup> [2013] NZERA Auckland 291

[2] The Authority's power to award costs arises from Schedule 2, clause 15 of the Employment Relations Act 2000 (the Act). This confers a wide discretion on the Authority to award costs, on a principled basis.

[3] The principles guiding the Authority's approach to costs are set out by the Full Employment Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808. Those principles are so well recognised I do not need to restate them.

[4] Mr Gelb sought an order for a contribution in the sum of \$8,395 inclusive of GST plus the Authority fee of \$71.56 relying on the existence of a *Calderbank* offer made on behalf of Ms Patel in an attempt to resolve the matter.

[5] The *Calderbank* offer was contained in a letter headed without prejudice save as to costs, dated 9 February 2013 (the offer). The offer was made before the statement of problem had been lodged. The offer was for Kangnai to pay Ms Patel:

- (a) Outstanding holiday pay;
- (b) \$4,500 under s.123(1)(c)(i) of the Employment Relations Act 2000;
- (c) Costs of \$2,600 plus GST.

[6] The offer was expressed to be open for acceptance until 4pm on Friday 15 February 2013.

[7] Ms Patel's offer is relevant in that it included a monetary offer which was less than the amount she was awarded in the Authority's determination. Further, Ms Patel's offer was made in a timely way when both parties' costs must still have been at low levels.

[8] The Employment Court in *Carter Holt Harvey v. Eastern Bays Independent Industrial Workers Union & Ors*<sup>2</sup> observed that a notional daily tariff approach, which was to be adjusted in a principled way, was best suited to the Authority's unique jurisdiction. I adopt that approach.

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<sup>2</sup> [2011] NZEmpC 13

[9] The starting point in assessing an appropriate costs award is the daily notional rate which is \$3500. The normal starting point for costs in the Authority is \$3,500 per day, *Fifita (aka Bloomfield) v. Dunedin Casinos Limited*<sup>3</sup>.

[10] This matter involved an investigation meeting of one full day. I have adopted a notional daily tariff of \$3,500 as my starting point and now consider whether there are any factors which would warrant adjusting that notional tariff.

[11] The only question of substance affecting whether the notional daily rate should be increased or decreased concerned the offer to settle. Because of the attempt by Ms Patel to settle the matter in a timely manner as set out above I am of the view the notional daily rate should be increased.

[12] Mr Gelb for Ms Patel supplied details of his costs of representation between February and June 2013 which totalled \$8,395, including GST.

[13] Taking into account all of the above considerations I conclude that the notional daily rate should be increased to \$6,000 including GST plus the filing fee of \$71.56.

[14] Kangnai is therefore ordered to contribute to Ms Patel's costs in the sum of \$6,071.56.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**

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<sup>3</sup> [2012] NZEA Christchurch at p.2019