

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 482
5451108

BETWEEN ZOE PICKERING
 Applicant

AND SOUND ENTERPRISES
 LIMITED T/A SCOTT
 TECHNICAL INSTRUMENTS
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Rose Alchin, Counsel for the Applicant
 Phillip Cornegé, Counsel for the Respondent

Submissions received: 28 October 2014 from Respondent
 11 November 2014 from Applicant

Determination: 24 November 2014

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In a determination dated 14 October 2014¹, the Authority found that the Applicant, Ms Pickering had not been unjustifiably dismissed by the respondent, Sound Enterprises Limited t/a Scott Technical Instruments (Scott Technical).

[2] In that determination costs were reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately they have been unable to do so, and both parties have filed submissions in respect of costs.

[3] Mr Cornegé, for Scott Technical seeks costs in the sum of \$3,500 being the Authority's notional daily rate. Mr Cornegé submits there was nothing extraordinary about the case that would warrant any departure (either upwards or downwards) from the daily tariff.

¹ [2014] NZERA Auckland 423

[4] Ms Alchin for Ms Pickering opposes Scott Technical's application for costs on the basis that Ms Pickering is of limited financial means and is a solo parent. Ms Alchin submits that it would be unjust, inequitable and would impose an unfair and unreasonable financial burden on Ms Pickering if she were required to pay further costs.

[5] The principles applicable to awards of costs in the Authority are well established. It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*² ("*Da Cruz*") that costs are modest. A tariff based approach is that usually adopted by the Authority, which has the discretion to raise or lower the tariff, depending on the circumstances. The Investigation Meeting lasted a full day. For a full day Investigation Meeting the notional daily rate amounts to an award of \$3,500.00.

[6] In setting the level of costs, it is also a principle in *Da Cruz* that costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct.

[7] Ms Pickering has filed a memorandum setting out her financial circumstances which show outgoings to be slightly higher than income. I take these circumstances in to account. The memorandum also shows losses incurred as a result of her dismissal.

[8] However, it is also important to take in to account the fact that Scott Technical in defending Ms Pickering's claim has been put to expense.

[9] Weighing all these considerations in the discretionary exercise of awarding costs, I consider that the notional daily rate should be adjusted to take in to account Ms Pickering's financial circumstances. I consider the notional daily rate should be adjusted downwards to reflect Ms Pickering's circumstances. Accordingly Ms Pickering is ordered to pay Scott Technical \$1,750 as a contribution to its costs.

[10] An arrangement may need to be made for Ms Pickering to pay the costs by way of instalments over several months. Leave is reserved for the parties to revert to the Authority for future orders if such arrangements are sought and cannot be agreed.

Anna Fitzgibbon
Member of the Employment Relations Authority

² [2005] 1 ERNZ 808