

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 338
5389182

BETWEEN KATHERINE PRYCE-JONES
Applicant

AND WENDELIEN BOMER
First Respondent

ROTHESAY BAY
PHYSIOTHERAPY (2000)
LIMITED
Second Respondent

ROTHESAY BAY
PHYSIOTHERAPY LIMITED
Third Respondent

Member of Authority: R A Monaghan

Representatives: H White, counsel for applicant
P Wicks QC, counsel for respondents

Memoranda received: 9 June and 25 July 2014 from applicant
13 June and 29 July 2014 from respondents

Determination 15 August 2014

DETERMINATION OF THE AUTHORITY ON COSTS

A. Rothesay Bay Physiotherapy 2000 Limited is ordered to pay Katherine Pryce-Jones the sum of \$1,750 in costs.

[1] In a determination dated 7 January 2013¹ (the 7 January determination) I addressed certain preliminary issues, and made a finding that the parties were in an employment relationship. Costs were reserved.

[2] The investigation preceding that determination was reopened in order to address the identity of the employer. The result was a further determination dated 26

¹ *Pryce-Jones v Bomer & Anor* [2013] NZERA Auckland 7

March 2014² (the 26 March determination) in which I found Katherine Pryce-Jones' employer was Rothesay Bay (2000) Limited (RBPL2000).

[3] In the circumstances at the time I proposed to address costs of the proceedings to date. The parties have now submitted memoranda on the matter.

[4] Ms White sought an order for full costs against all three respondents, jointly and severally. I understood this to mean full solicitor and client costs. No amount was specified.

[5] The order against all three respondents was sought on the basis that, at different times, it appeared that each of the respondents was being held out as the employer. Ms Bomer - whether in her personal capacity or her capacity as director of the other two respondents - was the individual responsible for the confusion. The costs of her actions should not be visited on Mrs Pryce-Jones.

[6] Mr Wicks QC opposed any order for costs against either or both of Ms Bomer and Rothesay Bay Physiotherapy Limited (RBPL). He submitted on behalf of RBPL2000 that:

- Mrs Pryce-Jones was entitled to an order for costs in respect of the investigation culminating in the 7 January determination, because the Authority had found RBPL2000 to be the employer; and
- RBPL2000 is entitled to an order for costs in respect of the investigation culminating in the 26 March determination.

[7] With reference to the Authority's notional daily tariff for a one-day investigation meeting, Mr Wicks QC suggested the sum of \$3,500 for the first of the investigations and \$1,750 for the second. The net outcome would be an order in favour of Mrs Pryce-Jones in the sum of \$1,750.

Order for costs

[8] I addressed aspects of Ms Bomer's conduct in findings of credibility made in the 7 January determination, and in finding against the respondents on the existence of

² *Pryce-Jones v Bomer & Ors* [2014] NZERA Auckland 111

an employment relationship in the same determination. There was no additional feature of the conduct during the investigations which warranted sounding in costs, as distinguished from its relevance to findings on the merits of the claim. Thus I do not visit those same matters on Ms Bomer, or either of her companies, in costs.

[9] Accordingly there will be no order for the payment of full solicitor and client costs.

[10] I have found the parties to the employment relationship were Mrs Pryce-Jones and RBPL2000. In that it was necessary to hear and determine who was the employer party to the relationship, Ms Bomer and RBPL were also parties to the matter before the Authority. As with any party to a proceeding, either or both of them are capable of being exposed to orders for costs against them. Correspondingly, they are capable of seeking an order for costs in their favour.

[11] However a principled approach must be applied. Here the material necessary for the Authority to determine the existence of an employment relationship, and who the employer was, came from Mrs Pryce-Jones, Ms Bomer, and the companies' accountant. The same material would have been required no matter who the employer was subsequently found to be. In that sense nothing in the participation of Ms Bomer and RBPL as parties in their own right increased the complexity of the investigation or the time taken to conduct it. There is no reason to make any order for costs against them.

[12] Mr Wicks QC's submissions reflected the usual approach of the Authority, as underpinned by the principles in *PBO Limited v da Cruz*.³ The approach also reflected an accurate assessment of the degree of success of the parties in respect of the two investigations.

[13] With reference to the conduct of the investigations, there is no reason to increase or decrease the notional daily rate. I apply the rate, and in the circumstances I consider it appropriate to make a single order reflecting the net outcome.

[14] PBPL2000 is therefore ordered to contribute to Mrs Pryce-Jones' costs in the sum of \$1,750.

³ [2005] ERNZ 808

The substantive claims

[15] Mrs Pryce-Jones' substantive claims remain adjourned until further approach from the parties.

R A Monaghan

Member of the Employment Relations Authority