



New Zealand Employment Relations Authority Decisions

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Purcell v NZ Eco Bees Limited (Auckland) [2018] NZERA 226; [2018] NZERA Auckland 226 (20 July 2018)

Last Updated: 25 July 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2018] NZERA Auckland 226
3019011

BETWEEN BRAD PURCELL Applicant

AND NZ ECO BEES LIMITED Respondent

Member of Authority: Robin Arthur

Representatives: Beverley Edwards, Counsel for the Applicant

Tanya Waikato, Counsel for the Respondent

Submissions: 12 June 2018 from the Applicant and 19 June 2018 from the Respondent

Determination: 20 July 2018

COSTS DETERMINATION OF THE AUTHORITY

[1] By an earlier determination the Authority found the end of Brad Purcell's employment with NZ Eco Bees Limited had amounted to an unjustified dismissal. NZEBL was ordered to pay him remedies of lost wages and compensation.¹

[2] When the parties were unable to then resolve what NZEBL should also pay towards the legal costs Mr Purcell had incurred in successfully pursuing his personal grievance, they lodged submissions so the Authority could determine that issue.

[3] Mr Purcell sought an order for \$18,807.17 (inclusive of GST) for his costs of legal representation. He also sought reimbursement of the Authority's \$71.56 fee for lodging his application and the \$306.66 hearing fee charged for the second day of the two day investigation meeting held to consider his claim.

[4] The memorandum on costs and disbursements lodged on Mr Purcell's behalf

made no submissions on the legal principles about costs or their application to the

1 *Purcell v New Zealand Eco Bees Limited* [2018] NZERA Auckland 163.

particular circumstances of his case. It comprised a table setting out the time spent attending to Mr Purcell's case on various dates along with a brief description of the work done on each occasion. Costs were claimed for that time at the rate of \$250 an hour plus GST. Division of the total amount claimed by that rate indicated payment was sought for just over 65 hours work on his file.

[5] The Authority assessment of costs typically starts from applying a daily tariff of \$4500 for a matter that required a one day investigation meeting and a further

\$3500 for each subsequent day if a longer meeting was needed. The tariff may then be adjusted upwards or downwards for any particular factors or circumstances in the case.²

[6] In this case, which needed a two day investigation meeting, the tariff was

\$8000. No upward adjustment of that amount was required for claimed costs of around \$1000 relating to arranging and attending mediation. Costs relating to mediation are not generally awarded by the Authority. Similarly excluded are \$275 sought for lodging the costs memorandum and \$50 sought for an “admin update” of noting Mr Purcell’s new address on his lawyers’ file.

[7] The table setting out costs in Mr Purcell’s memorandum claimed the tariff amount of \$4500 as costs incurred for the first day of the investigation and \$3500 as costs incurred for the second day. However those tariff amounts are intended to also apply to time spent on preparation for the investigation meeting, not just the representative’s time attending on the day of the investigation meeting. This includes, for example, time taken in consulting witnesses and drafting witness statements for them. While Mr Purcell has incurred preparation costs greater than the tariff provided, the principle that awards will be modest applied so that no uplift was warranted on that account. He claimed \$500 as costs for counsel liaising on his behalf with the Police about issuing a harassment order against NZEBL director Tim Ponder. Costs are not to be used as a punishment or to express disapproval of Mr Ponder’s conduct. However the conduct of Mr Ponder that led to Mr Purcell’s perceived need to seek that order were directly related to his employment relationship problem. This

unnecessarily increased the legal costs Mr Purcell incurred so could be taken into

2 *PBO Ltd v Da Cruz* [2005] NZEmpC 144; [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC

135 at [106]-[108].

account to increase the award. For that reason the tariff amount is increased by \$500 to \$8500.

[8] NZEBL’s memorandum on costs accepted the tariff of \$8000 as the appropriate starting point. It sought a downward adjustment of that amount by ten per cent to mirror the reduction applied to the remedies awarded to Mr Purcell due to conduct by him that had contributed to the situation giving rise to his grievance. Such a reduction could not also be applied to whatever costs he was to be awarded as that would be to contrary to the principle already referred to – that costs are not to be used as punishment. Any adjustment required for Mr Purcell’s contributory conduct had already been applied in setting the remedies he was awarded for his personal grievance. To then make a further reduction in the amount his employer was required to contribute to his legal costs would amount to ‘double counting’ of that conduct.

[9] For the reasons given the appropriate order for costs was \$8,500. To that amount must be added reimbursement of two expenses Mr Purcell also incurred – the

\$71.56 filing fee and the \$306.66 hearing fee.

Order

[10] Accordingly NZEBL must, within 28 days of the date of issue of this determination, pay Mr Purcell the total sum of \$8,878.22 as costs and expenses.³

Robin Arthur

Member of the Employment Relations Authority

3 [Employment Relations Act 2000](#), Schedule 2 clause 15(1).

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