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Riley v Mr Salad Limited (Auckland) [2017] NZERA 151; [2017] NZERA Auckland 151 (23 May 2017)

Last Updated: 10 June 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2017] NZERA Auckland 151
3003732

BETWEEN JEANETTE RILEY Applicant

AND MR SALAD LIMITED Respondent

Member of Authority: Vicki Campbell

Representatives: Tom Castle for Applicant

No appearance for Respondent Submissions received: 17 May 2017 from Applicant Determination: 23 May 2017

COSTS DETERMINATION OF THE AUTHORITY

**A. Mr Salad Limited is ordered to pay to Ms Riley the amount of
\$4,000 as a contribution to her costs within 28 days of the date of this determination.**

[1] In an oral determination delivered on 21 April 2017¹ I held Ms Riley was owed arrears of wages and that one or more conditions of her employment had been affected to her disadvantage by the unjustified actions of Mr Salad Limited.

[2] I reserved costs, indicating that if the parties were unable to resolve that issue, both parties would have the opportunity to file cost memoranda and evidence. These have now been received by the Authority for consideration.

[3] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. Under normal

¹ [2017] NZERA Auckland 122.

circumstances the Authority would apply a starting point of a notional daily tariff for quantifying costs.

[4] The Authority has been provided with evidence that Ms Riley incurred costs of \$8,200 plus GST. A review of the invoices shows the payments incurred by Ms Riley included payments applicable to issues about her shareholding in the company. These costs are not associated with her employment relationship problem and should be discounted.

[5] As held recently by the Employment Court, the assessment of an appropriate contribution to costs in the Authority requires a different approach to assessing costs to that used by the Employment Court.² As noted in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*³ awards in the Authority will be modest taking into account conduct which increases costs unnecessarily. Indemnity costs may be justified in relatively rare cases where a party's conduct is particularly egregious.⁴

[6] The daily tariff applicable to this matter is \$4,500. The investigation meeting took half a day. Discounting the daily tariff to account for the half day hearing time leaves a starting point of \$2,250.

[7] Ms Riley seeks an uplift from the daily tariff plus payment of her filing fee as a disbursement. Ms Riley says the conduct of Mr Salad Limited increased the costs incurred by Ms Riley and was such that an uplift from the daily tariff should be ordered.

[8] By way of example Ms Riley points to enquiries she herself made of Mr

Revell and requests in writing including a letter written on her behalf on 27 January

2017, asking for payment of outstanding wage payments and holiday pay. The requests were ignored by Mr Salad Limited. The issue required the intervention of the Authority.

[9] Another factor Ms Riley says should be taken into account is the failure of Mr

Salad Limited to engage at all in the Authority's process. Ms Riley says that if Mr

Salad Limited had engaged it is likely the parties would have been sent to mediation

² *Booth v Big Kahuna Holdings Limited* [2015] NZEmpC 4 at [6].

³ [2005] NZEmpC 144; (2006) 7 NZELC 98,128; [2005] ERNZ 808; ([2005] NZEmpC 144; 2005) 3 NZELR 1 (EMC).

⁴ *Tomo v Checkmate Precision Cutting Tools Limited* [2015] NZEmpC 2 at [9].

and the matters between them resolved without the need for intervention by the

Authority.

[10] Further conduct by Mr Salad Limited includes the threatening behaviour of Mr Revell when he demanded Ms Riley withdraw her proceedings or he would put the company into liquidation. Ms Riley says that his conduct justifies indemnity costs because Mr Revell's actions was an attempt to undermine Ms Riley's right to have her claims properly investigated and determined.

[11] I am satisfied Ms Riley has been put to the costs of establishing her claims because of the conduct of Mr Salad Limited. It is possible, but not probable, that had Mr Salad Limited engaged constructively in the Authority processes the matters may have resolved earlier with the assistance of mediation.

[12] There was nothing overly complex about the matters in question and taking all the circumstances into account I consider it appropriate that Mr Salad Limited pay to Ms Riley the amount of \$4,000 as a contribution to her costs and that this payment be made within 28 days of the date of this determination.

Vicki Campbell

Member of the Employment Relations Authority

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