

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

**[2019] NZERA 320
3050374**

BETWEEN

JORGE RIVERA
Applicant

AND

PLENTYFLORA LIMITED
Respondent

Member of Authority: Eleanor Robinson
Submissions received: 27 May 2019 from Applicant
27 May 2019 from Respondent
Determination: 30 May 2019

COSTS DETERMINATION OF THE AUTHORITY

[1] The Applicant, Mr Jorge Rivera, filed a Statement of Problem with the Authority on 14 February 2019 seeking monies from the Respondent, Plentyflora Limited (Plentyflora), in respect of non-payment of holiday pay and sick leave, and claiming unjustifiable dismissal, disadvantage and discrimination.

[2] Plentyflora denied all claims.

[3] A case management conference was held with the parties on 25 March 2019, during which a timetabling process was discussed and agreed in regard to a preliminary determination on the papers. The preliminary issue to be determined was the status of Mr Rivera's relationship with Plentyflora.

[4] Both parties filed information with the Authority in accordance with the timetable, however on 8 May 2019 Mr Rivera withdrew his Statement of Problem and the matter was closed.

[5] Plentyflora is now seeking a contribution to costs in relation to this matter. Plentyflora submits that it incurred actual legal fees in the amount of \$6,990.00 (including in respect of costs), and has submitted supporting evidence of the fees incurred.

Principles

[6] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) which states:

15 Power to award costs

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[7] The principles and the approach adopted by the Authority on which an award of costs is made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*¹ as confirmed in *Fagotti v Acme & Co Ltd*.²

[8] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*³ that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*⁴ at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.”

[9] The Authority’s jurisdiction in respect of costs extends to a situation in which an Applicant elects to withdraw a proceeding at any stage prior to issue of determination. However, whilst I have discretion in considering whether or not a party’s costs were necessary or unreasonable, it is incumbent upon me that I approach the question of costs in a principled manner and not arbitrarily. The primary principle is that costs follow the event.

[10] I accept that in this case, whilst Plentyflora did not incur the expense associated with attendance at an Authority investigation, it has nonetheless been put to some expense in taking steps to defend the claims made by Mr Rivera in the preparation of submissions in respect of the preliminary issue.

[11] Costs in the Authority are normally awarded on the basis of a daily tariff which equates to \$4,500.00 for a full day of an investigation meeting hearing.

¹ [2005] 1 ERNZ 808

² [2015] NZEmpC 135 at [114]

³ [2005] 1 ERNZ 808

⁴ [2001] ERNZ 305

[12] In this case the matter was discontinued by Mr Rivera prior to the preliminary matter being determined. Notwithstanding the Authority has the discretion to determine costs as appropriate.

[13] Having fully considered this matter, I consider it appropriate that the Applicant make a contribution to the legal costs of the Respondent.

[14] Accordingly Mr Rivera is ordered to pay Plentyflora the sum of \$1,250.00 towards its legal costs.

Eleanor Robinson
Member of the Employment Relations Authority