

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2013] NZERA Christchurch 144
5383531

BETWEEN BARBIE ROBERTS
 Applicant

A N D Y
 Respondent

Member of Authority: M B Loftus

Representatives: Ceaera Rooney, Advocate for Applicant
 Mark Henderson, Counsel for Respondent

Submissions Received: 20 June 2013 from the Respondent
 4 July 2013 from the Applicant

Date of Determination: 11 July 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] On 14 May 2013 I issued a determination dismissing Ms Roberts' claim she was unjustifiably dismissed on the grounds she was a contractor and therefore precluded from taking a personal grievance. Costs were reserved.

[2] The successful respondent, Y, now seeks a contribution toward the costs incurred in defending the claim.

[3] Normally the Authority will use a daily tariff approach when addressing a costs claim (refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808). The normal starting point is \$3,500 per day and from there adjustment may be made depending on the circumstances.

[4] Y seeks \$3,500 as a contribution toward costs emanating from the investigation meeting. She supports the claim by referring to the tariff, appending

evidence of her costs (which exceeds those sought) and arguing as to why those incurred were reasonable in the circumstances.

[5] In addition she seeks \$500 as a contribution toward the cost of preparing both this application and an interlocutory one concerning name suppression. Finally she seeks \$1,330.28 as reimbursement of the cost of travel from Auckland incurred as a result of her having moved since the cause of action arose.

[6] Ms Robert's responds by stating the tariff should be reduced. She says *Any [award] above a minimal amount, will cause financial hardship* and the claim was legitimate as the outcome was unforeseeable. Ms Roberts asks that should I conclude a contribution is warranted, I consider a payment plan so as to avoid hardship.

[7] It is well established costs follow the event and a successful party is entitled to a contribution toward those incurred. As already said, those costs are normally awarded in accordance with a formula which is altered according to the circumstances.

[8] Y seeks to apply the formula and there is no suggestion her claim is, at least in respect to the investigation meeting and ancillary applications, unreasonable.

[9] There is, however, a submission for reduction but it fails to sway me. The suggestion the outcome was unforeseeable is untenable – it affirmed a defence originally tendered and there is absolutely no evidence tendered in support of the contention Ms Roberts may suffer financial hardship.

[10] For these reasons the claim for recompense in accordance with the normal approach shall succeed. That leaves the issue of disbursements.

[11] Those relate to travel costs incurred as a result of Y choosing to shift after the cause of action arose. Those costs are not, in my view, reimbursable. Regulation 13 of the Employment Relations Authority Regulations 2000 (SR 2000/186) provides an investigation shall, unless the parties agree otherwise, occur in the place the cause of action arose. The cause of action arose in Christchurch. Y's subsequent decision to move was hers. The consequences of her decision and resulting costs cannot, in my view, be visited upon Ms Roberts.

[12] For the above reasons, and having considered the evidence and submissions, I order Ms Roberts pay Y the sum of \$4,000 (four thousand dollars) as a contribution toward costs.

[13] Finally, and given the claim of impecuniosity and Ms Roberts' request I consider a payment schedule, I remind the parties that should this order lead to undue hardship and the parties be unable to agree a schedule, the order can be amended. Leave is therefore reserved for a return to the Authority should a schedule be required and the parties unable to agree its terms. Such a request will, however, require evidential support.

M B Loftus
Member of the Employment Relations Authority