

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 332
5523778

BETWEEN

JESSICA SAYWELL
Applicant

A N D

BOWERS FARMS LIMITED
Respondent

Member of Authority: T G Tetitaha

Representatives: Applicant in person
D Whitehead, Counsel for Respondent

Investigation Meeting: On the papers

Submissions: 26 June 2015 from Applicant
15 June 2015 from Respondent

Date of Determination: 21 October 2015

COSTS DETERMINATION OF THE AUTHORITY

A. Jessica Saywell is ordered to pay Bowers Farms Limited \$7,000 towards its actual legal costs.

Employment relationship problem

[1] The Authority in its substantive determination dated 4 June 2015¹ dismissed the applicant's personal grievance application and reserved costs.

[2] The respondent now applies for costs at the Authority's daily notional rate and an increase for the costs and disbursements of various witnesses.

Issues

[3] The following issues are to be determined:

¹ *Saywell v Bowers Farms Limited* [2015] NZERA Auckland 156

- a. What is the starting point for assessing costs?
- b. Are there any factors that warrant adjusting the notional daily tariff?

What is the starting point for assessing costs?

[4] The correct approach to assessing costs in this matter is for the Authority to adopt its usual notional daily tariff based approach to costs.² The current notional daily tariff is \$3,500. This matter involved a two day investigation meeting. The starting point for assessing costs is therefore \$7,000.

Are there any factors that warrant adjusting the notional daily tariff?

Factors which warrant a reduction in the notional daily tariff

[5] Ms Saywell refers to disbursement costs she has incurred, her move to Gisborne, outstanding loan and difficulties securing child care. She produced evidence of her last 12 months income of \$30,124. I understand from her evidence she has several children including a baby to support. She also has a partner living in Northland while he worked out his notice. The upshot of her evidence appears to be she is financially impecunious.

[6] Costs follow the event.³ Parties should not have to defend applications and if successful face the possibility of being denied any reasonable contribution to their costs because of an impoverished applicant.

[7] The financial circumstances of an unsuccessful party may warrant payment to be ordered by instalments. It does not of itself require reduction in costs. Given the lack of evidence about Ms Saywell's ability to make payments by way of instalment, I decline to order this. She is able to contact the respondents or their lawyer to make those arrangements herself.

Factors which warrant an increase to the notional daily tariff

[8] The respondent submits it has incurred substantial costs in defending the proceedings of \$13,041 GST incl. It incurred the expenses of expert witnesses such

² *Mattingly v Strata Title Managment Ltd* [2014] NZEMPC 15 at [16]

³ *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] ERNZ 808 (Emp C) at [35].

as a farm consultant (\$1,784.57), veterinarian surgeon (yet to be invoiced) and a non-expert witness Patricia Johnston (\$182.50).

[9] Proceedings in the Authority should be “low level, cost effective, readily accessible, and non-technical” and costs should be “modest”.⁴ Disbursements, especially for expert and non-expert witnesses, sought to be recovered must be examined to ascertain if they were reasonably incurred having regard to the nature of proceedings in the Authority.

[10] The evidence of Ms Johnson, a non-expert witness was not required. Her appearance could have been dispensed with but given Ms Saywell was self-represented, she did not apprehend this was possible until the start of hearing. Ms Johnson gave generalised evidence about the Bower’s health and safety procedures which provided context but did not assist me in resolving the core issues. I decline to make any increased award for her presence. The expenses were not in my view reasonably required for disposal of this matter in the Authority.

[11] The veterinarian surgeon was not required at hearing. His evidence was about the Bowers’ treatment of their stock. His expenses were not in my view reasonably required for disposal of this matter in the Authority.

[12] The farm consultant, Dr Eweson, did not prepare a brief. Rather he confirmed the contents of two letters of support he had written for the Bowers. The letters dealt with, again, the Bowers’ health and safety practices. His evidence was not reasonably required to dispose of matters. I decline to make any increase to my costs award.

Outcome

[13] Jessica Saywell is ordered to pay Bowers Farms Limited \$7,000 towards its actual legal costs.

TG Tetitaha
Member of the Employment Relations Authority

⁴ *Stevens v Hapag-Lloyd (NZ) Ltd* [2015] NZEmpC 28 at [94].