

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 508
5344106

BETWEEN IAN SIGGLEKOW
Applicant

AND WAIKATO DISTRICT
HEALTH BOARD
Respondent

Member of Authority: Rachel Larmer

Representatives: Anamika Singh, Counsel for Applicant
Amy Tiatia, Advocate for Respondent

Submissions Received 22 September 2011 from Applicant
06 October 2011 from Respondent

Determination: 30 November 2011

DETERMINATION OF THE AUTHORITY

A Waikato District Health Board is ordered to contribute \$1,500 towards Mr Sigglekow's costs and to pay him \$71.56 to reimburse his filing fee.

Issue

[1] The parties have been unable to resolve costs by agreement, so Mr Sigglekow now seeks an order that Waikato District Health Board ("WDHB") contribute to his actual legal costs.

[2] Waikato District Health Board ("WDHB") opposed Mr Sigglekow's costs application and submitted that he should not be awarded any costs.

Applicant's submissions

[3] Ms Singh submitted that because Mr Sigglekow's personal grievance claim for unjustified dismissal was successful he should be entitled to a contribution towards his actual legal costs. Ms Singh stated that Mr Sigglekow's legal costs were \$8,950 plus GST and disbursements.

[4] On behalf of Mr Sigglekow, she sought an order that WDHB pay \$4,500 towards his legal costs plus \$130 to reimburse him for disbursements. No details of the actual disbursements incurred were provided, with Mr Sigglekow merely claiming \$130 as unspecified "*office expenses*".

[5] Ms Singh submitted that a notional daily tariff of \$3,000 was appropriate but said that should be applied to one and a half days of investigation time (instead of one day) because the meeting did not finish until after 5pm. On that basis she submitted that the tariff to be applied should be \$4,500.

[6] Ms Singh submitted that the without prejudice except as to costs offer WDHB made around 3pm on 20 June 2011 was too close to the investigation date of 22 June 2011 for Mr Sigglekow to properly consider and that by then he had already incurred all his legal costs except for those associated with attending the investigation and providing submissions post the investigation.

[7] Ms Singh submitted that the Authority should take no account of WDHB's offer.

Respondent's submissions

[8] Ms Tiatia submitted that no costs should be awarded because the amount awarded to Mr Sigglekow did not exceed WDHB's without prejudice except as to costs offer on 20 June 2011, which was for \$6,000.

[9] Ms Tiatia submitted that costs should lie where they fall. Alternatively, she submitted that if costs were to be awarded then the Authority should apply a daily tariff which has been reduced to take account of the circumstances of the case.

[10] Ms Tiatia submitted that a daily tariff of \$2,500 was an appropriate starting point but stated that needed to be reduced because;

- a. Both parties had a degree of success because Mr Sigglekow's claim for reinstatement was unsuccessful;
- b. Ms Singh's "*gratuitous and lengthy cross examination was not helpful or efficient [...] and contributed to the length of the investigation meeting*";
- c. The matter was not complex or difficult.

[11] Ms Tiatia submitted that the investigation meeting was one day, not a day and a half.

Legal principles

[12] The Authority's power to award costs is conferred by clause 15 of Schedule 2 of the Employment Relation Act 2000 Act ("the Act").

[13] Costs are discretionary, but the normal principle is that costs follow the event and I see no reason to depart from that in this case. I therefore find that Mr Sigglekow, as the successful party, is entitled to a contribution towards his actual legal costs.

[14] The general principles for awards of costs in the Authority were set out by the full Employment Court in the leading case of *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*.¹ These principles are so well known that I do not need to set them out here. Suffice to say I am guided by those well recognised principles when assessing the amount (if any) of costs that should be awarded.

Findings

[15] Mr Sigglekow was awarded \$3,455.52 as reimbursement for lost remuneration (which was to be taxed in the normal way) plus \$2,000 as distress compensation (which was a tax free amount).

¹ [2005] ERNZ 808

[16] WDHB did not propose to pay Mr Sigglekow the \$6,000 it had offered him under s123(1)(c)(i) of the Act, so tax would have had to have been deducted from the amount it had offered. WDHB's offer did not address the issue of costs, so no contribution was offered towards the legal costs Mr Sigglekow had incurred up to the date of the offer.

[17] Once adjustments are made to take account of deductions for tax, the actual amount obtained by Mr Sigglekow as a result of proceeding to an investigation is almost the same as that offered by WDHB. However, that position changes if Mr Sigglekow were to be awarded any costs. A costs award in his favour would mean he ultimately ended up with more than WDHB's offer on 20 June 2011.

[18] I find that the without prejudice offer relied on by WDHB does not disqualify Mr Sigglekow from any contribution towards his legal costs but it is a relevant factor for me to consider when determining whether any adjustment should be made to the notional daily tariff.

[19] I have adopted as a starting point a notional daily tariff of \$3,000 per day. I have then considered, on a principled basis, whether there are any factors which warrant an adjustment to the notional daily tariff.

[20] I do not consider there are any factors which warrant an increase to the notional daily tariff.

[21] I consider the following factors warrant a reduction in the notional daily tariff to \$1,500;

- a.* Mr Sigglekow was not wholly successful because he did not obtain the remedy of reinstatement;
- b.* WDHB's offer on 20 June 2011 was a reasonable offer which if accepted would have saved both parties the time and cost associated with attending the investigation meeting, preparing closing submissions, and preparing costs submissions;
- c.* Mr Sigglekow had sufficient time to consider WDHB's offer. By 20 June 2011 the parties had attended mediation and all of the evidence had

been filed. Mr Sigglekow had been represented by counsel from the outset (as soon as the disciplinary allegations had been raised with him) so he was well placed to assess the merits of each parties' case and the risks associated with declining WDHB's offer prior to the investigation meeting commencing on 22 June 2011.

[22] I do not accept Ms Tiatia's submissions that Ms Singh's cross examination or the lack of complex or difficult issues were factors which warranted a reduction in the notional daily tariff.

[23] I find that the investigation meeting was of one day's duration. Although it ended after 5pm it had started later than normal, so it was in fact still only a one day investigation.

Disbursements

[24] Ms Singh did not itemise Mr Sigglekow's disbursements claim so I had no way of knowing what the \$130 claimed actually covered or even whether such disbursements related to expenses he had actually incurred. I find that Mr Sigglekow is not entitled to recover general "*office expenses*" which consist of the normal costs associated with running a legal practice.

[25] I am therefore only prepared to order WDHB reimburse Mr Sigglekow for his filing fee because this is the only disbursement that I know he has incurred.

Order

[26] WDHB is ordered to contribute \$1,500 towards Mr Sigglekow's legal costs plus \$71.56 to reimburse his filing fee.

Rachel Larmer
Member of the Employment Relations Authority