

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2012] NZERA Christchurch 29
5306938

BETWEEN

TANIA MARIE SMITH
Applicant

A N D

McGLYNN HOMES LIMITED
Respondent

Member of Authority: Helen Doyle

Representatives: Tania Marie Smith in Person
Susie Staley, Counsel for Respondent

Submissions Received: 27 January 2012 from Applicant
9 January 2012 from Respondent

Date of Determination: 17 February 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 2 December 2011, I found in favour of the respondent in a personal grievance claim and reserved the issue of costs. I have now received submissions from both parties.

Respondent's submissions

[2] The Respondent applies for a contribution towards its costs. It says that it has incurred legal costs of \$1,830 through to and including mediation and \$6,125 legal costs following mediation through to completion of the Authority investigation meeting. The respondent attaches invoices to its submissions.

Applicant's submissions

[3] The applicant expressed disappointment with the Authority's determination and with McGlynn seeking costs.

[4] In relation to the issue of costs, the applicant submits that mediation and prior preparation should not be part of the claim before the Authority.

[5] The applicant submits that McGlynn continued to employ a lawyer for the Authority's investigation meeting even though it knew that, after mediation, Ms Smith was unrepresented.

[6] The applicant submits that the lawyers' fees appeared relatively expensive and that, if costs were awarded against her, it would cause a degree of hardship as she has already used money she had set aside to pay her own lawyer and does not have any more savings.

[7] The applicant says that, at the end of the day, she did nothing wrong and has been penalised.

Determination

[8] The principles in relation to costs awards are set out in the Employment Court judgment of *PBO Ltd (formerly Rush Security) v. Da Cruz* [2005] 1 ERNZ 808. The Authority has a discretion as to costs that it should exercise in a principled manner. There is a general rule I do not consider in this case it would be fair to depart from that costs should follow the event. Costs are not to be used as a punishment or an expression of disapproval although conduct that has increased costs unnecessarily can be taken into account by increasing or reducing an award. The circumstances of each case must be considered when it comes to a costs award however often in relation to costs in the Employment Relations Authority that there is a daily tariff approach. At the current point in time, there has been support for a tariff in the region of \$3,000 per day.

[9] I accept the applicant's submission that costs related to mediation and discussions prior to mediation whilst the applicant was in employment should not be taken into account.

[10] The investigation meeting in this matter did not take a full day. I accept the applicant's submission that the matters were relatively straightforward, factually based and there was no legal complexity. The case was very important to both parties. There was no conduct that I found increased costs unnecessarily on the part of either party.

[11] I do not find that this is a case where an indemnity award should be made. I do find that there should be some contribution towards the respondent's costs. I start

with a daily tariff taking the shorter investigation meeting time into account of \$2500. I then make a \$500 deduction from that to reflect the applicant's submission she has no savings. In making that deduction I note aside from the submission there was no other documentary evidence provided.

[12] In all the circumstances, and taking into the account the applicant's submission as to hardship, I am of the view that a fair and reasonable award of costs in this case would be the sum of \$2,000.

[13] I order Tania Marie Smith to pay to McGlynn Homes Limited the sum of \$2,000 being costs. If the payment of this sum immediately would present difficulties, then the applicant can no doubt approach the respondent for reasonable payment over a period of time.

Helen Doyle
Member of the Employment Relations Authority