

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2012] NZERA Christchurch 136  
5325765

BETWEEN                      LAUREN SMITH  
   Applicant  
  
A N D                              MUNCHIES    ON    MARSDEN  
   LIMITED  
   Respondent

Member of Authority:        Helen Doyle  
  
Representatives:              Shannon Hollis, Counsel for Applicant  
   Robyn Scott, Advocate for Respondent  
  
Submissions Received        7 May 2012 from Applicant  
   30 May 2012 from Respondent  
  
Date of Determination:      5 July 2012

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**COSTS DETERMINATION OF THE AUTHORITY**

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**The application for costs**

[1]     In my determination dated 13 April 2012, I found in favour of the applicant that she had a personal grievance and awarded remedies. I reserved the issue of costs and timetabled for an exchange of submissions as to costs.

[2]     I have now received submissions from Ms Hollis on behalf of the applicant and Robyn Scott, a director of the respondent company.

**The applicant's submissions**

[3]     The applicant has incurred actual costs in the sum of \$3,061.52 exclusive of GST together with disbursements of \$30. Ms Hollis' hourly rate was \$180 plus GST which is a reasonable rate. Ms Hollis referred in her submissions to a *without prejudice save as to costs* offer to settle the personal grievance made on 15 December

2010. Mediation was subsequently undertaken but did not resolve the matter and then there was, shortly before the hearing, another *without prejudice save as to costs* offer. Whilst I acknowledge that those offers were made and sensibly so to resolve the matter, given the applicant's success, I do not find they should reflect in terms of any award made.

[4] The applicant seeks an award in her favour of \$2,611.52.

### **The respondent's submissions**

[5] Ms Scott concentrated on the *Calderbank* offers in the first page of her submissions although given my comments above I do not need to deal with those. Ms Scott submits that the business is struggling and in order to pay the award made to the applicant she has recently taken out a loan which has put the business under extreme financial pressure. Ms Scott has also asked that the Authority allow payment of any costs award made to be by way of monthly instalments as the Authority sees fit.

### **Determination**

[6] In the Authority costs awards are modest but nevertheless do reflect that parties in litigation are required to incur costs that are often significant in terms of representation at a hearing.

[7] Costs awards are frequently made on the basis of a daily tariff which is now recognised by the Authority as being \$3,500. This matter was able to be concluded short of a full day, although that does not, of itself, mean that any costs should simply be halved. Ms Hollis took a sensible factual approach to the case and no costs were incurred for preparation of submissions. I acknowledge the business's financial difficulties although do not in this particular case think they should reflect significantly on the claim for what is, when considered with other matters that the Authority deals with, a very reasonable claim for costs by the applicant.

[8] I find that a fair award would be the sum of \$2500.

[9] Given the respondent's financial position I will make an order that there be payment of that sum in monthly instalments by the respondent of \$416.66 for a period of six months.

[10] I order Munchies on Marsden Limited to pay to the applicant costs in the sum of \$2,500. Payment of the costs award is to be over a six month period by way of a monthly payment of \$416.66. If these monthly payments are not made, then the full amount outstanding at that time will become due and owing.

Helen Doyle  
Member of the Employment Relations Authority