

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2013] NZERA Wellington 100  
5371658

BETWEEN            BARBARA TAUREREWA  
                                 Applicant  
  
AND                    KAY COBB  
                                 Respondent

Member of Authority:    Michele Ryan  
  
Representatives:        Graeme Ogilvie, Advocate for the Applicant  
                                 Respondent in person  
  
Submissions              17 June 2013 for the Applicant  
                                 29 July 2013 for the Respondent  
  
Determination:         15 August 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]    In a determination dated 12 June 2013 the Authority found that the applicant had been unjustifiably dismissed and remedies were awarded. Costs associated with the determination were reserved.

[2]    The applicant is now seeking costs. In submissions provided to the Authority prior to my determination of the substantive matters<sup>1</sup>, the applicants costs were estimated as \$3,000 plus filing fee of \$71,56. I note that sum included costs associated with attendance at mediation which the applicant must bear.

[3]    On 17 June 2013 the applicant applied for a contribution of \$1,200 plus disbursements of \$71.57 to her costs, on the basis that her claims were upheld before the Authority. No invoices as to actual costs incurred have been provided.

[4]    By email of 29 July 2013 the respondent simply advised she has no money to pay the applicant and that her income is barely sufficient to pay for her own living

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<sup>1</sup> Dated 7 March 2013

costs. She further advised that her accountant can verify her financial circumstances but no further detail was supplied. Without certified financial statements or other reliable information to confirm Ms Cobb's financial affairs I am unable to give weight to her assertions.

## **Principles**

[5] The power of the Authority to award costs arises from clause 15 of Schedule 2 of the Employment Relations Act which states:

### **15 Power to award costs**

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[6] The principles which guide the Authority's approach to costs are set out by the Full Employment Court in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*<sup>2</sup>. In that case the Court referred to a number of principles which give guidance to the Authority when it considers costs. Those principles are now so well established that I have not restated these in full.

[7] The usual approach of the Authority is to assess costs using a notional daily tariff. At present that tariff is \$3,500 per day of investigation. The Authority has the discretion to raise or lower the tariff depending on the circumstances of the matter and it should not be applied rigidly.

## **Determination**

[8] This was a simple and straightforward matter. No complex procedural issues or matters of law arose in the investigation. Although there was some initial reluctance from the respondent to engage in the Authority's investigation, the matter progressed in the usual and accepted ways. In these circumstances I see no reason to depart from the normal level of awards made by the Authority in similar circumstances.

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<sup>2</sup> [2005] ERNZ 808

[9] The normal rule is that costs follow the event and Ms Taurerewa is entitled to a contribution to her costs. The investigation meeting took a little over an hour. I consider the daily tariff should be scaled down proportionally to reflect the time the parties were required to engage in the Authority's investigation. I consider \$500.00 is a suitable contribution towards for Ms Taurerewa's costs.

**Order**

[10] Pursuant to Section 15 of Schedule 2 of the Employment Relations Act I order the respondent to pay the applicant the sum of \$500.00 as contribution towards the applicant's costs plus \$71.56 as the cost of the filing fee.

Michele Ryan  
Member of the Employment Relations Authority