

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 112  
5416829

BETWEEN                      BARBARA TWENTYMAN  
Applicant  
  
AND                              THE WAREHOUSE LIMITED  
Respondent

Member of Authority:      Vicki Campbell  
  
Representatives:            Megan McKee-Trail for Applicant  
                                     Matthew McGoldrick for Respondent  
  
Submissions received:      No submissions from Applicant  
                                     9 March 2015 from Respondent  
  
Determination:              16 April 2015

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A. Ms Twentyman is ordered to pay \$8,750.00 by way of contribution to TWL's legal costs plus disbursements of \$1,106.43.**

[1] In a determination dated 9 February 2015 <sup>1</sup> I found in favour of The Warehouse Limited (TWL) in all respects including a counter-claim against Ms Twentyman.

[2] I reserved costs, directing that if the parties were unable to resolve that issue, both parties would have the opportunity to file cost submissions and evidence for consideration by the Authority. The parties have been unable to reach any agreement and I am in receipt of submissions from TWL but have received no submissions from Ms Twentyman.

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<sup>1</sup> [2015] NZERA Auckland 39.

[3] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event.

### **Determination of costs**

[4] Despite directing the parties to provide the Authority with a breakdown of how and when costs were incurred plus the supporting evidence, TWL has provided a copy of only one invoice in the amount of \$3,538.81 relating to legal costs incurred prior to the investigation meeting which was held in November 2014. The Authority has received supporting evidence of the disbursements being sought for reimbursement.

[5] TWL submits that its costs exceeded \$10,500 but has limited its application for an award of costs to the daily tariff of \$3,500 for each day of hearing.

[6] As held recently by the Employment Court, the assessment of an appropriate contribution to costs in the Authority requires a different approach to assessing costs to that used by the Employment Court.<sup>2</sup> As noted in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*<sup>3</sup> awards in the Authority will be modest taking into account conduct which increases costs unnecessarily. Indemnity costs may be justified in relatively rare cases where a party's conduct is particularly egregious.<sup>4</sup>

[7] The Authority applies a starting point of a notional daily tariff for quantifying costs. In this case the investigation into the Ms Twentyman's claims took two and a half days. On the tariff based approach that would be a costs reimbursement of \$8,750.00.

[8] TWL is seeking to uplift the daily tariff by half a day and is seeking the equivalent of three hearing days or \$10,500 plus disbursements of \$2,095.53.

[9] TWL submits that Ms Twentyman's conduct of the case lengthened the time the matter should have taken. I agree that the management of Ms Twentyman's claims was not ideal. Ms Twentyman failed to provide transcripts of recorded

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<sup>2</sup> *Booth v Big Kahuna Holdings Limited* [2015] NZEmpC 4 at [6].

<sup>3</sup> (2006) 7 NZELC 98,128; [2005] ERNZ 808; (2005) 3 NZELR 1 (EMC).

<sup>4</sup> *Tomo v Checkmate Precision Cutting Tools Limited* [2015] NZEmpC 2 at [9].

discussions, put into evidence, on the second day, a significant number of documents that were not ordered, numbered or referred to in her evidence.

[10] Even though the way the matter was managed by Ms Twentyman led to extra hearing time that extra time is recognised by the fact that the tariff approach includes all hearing time. If the matter had been better managed, the hearing may only have taken two days. The fact that it took two and a half days becomes a penalty to Ms Twentyman by virtue of the fact that she will be faced with contributing costs for the additional hearing time.

[11] Taking all the circumstances into account I consider that this is an appropriate case for the application of the notional daily rate. Ms Twentyman is ordered to pay \$8,750.00 by way of contribution to TWL's legal costs

[12] TWL also claims disbursements being accommodation, food and mileage for its witnesses attending the investigation meeting. The disbursements associated with Mr Vaughan giving evidence at the investigation meeting, and the photocopying of the bundles of documents are reasonable expenses to be reimbursed but decline to order reimbursement of other accommodation and mileage expenses. The other witnesses were, at the time of the investigation meeting, all employees of TWL.

[13] I find the costs associated with having employees of the company provide evidence at the investigation meeting was expended in the normal course of doing business where an employee is asserting their right to challenge aspects of their employment relationship and is not an expense I would expect Ms Twentyman to be liable for.

[14] Ms Twentyman is ordered to pay disbursements of \$1,106.43.

Vicki Campbell  
Member of the Employment Relations Authority