

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2013] NZERA Christchurch 232  
5392084

BETWEEN            LISA WALE  
                                 Applicant

A N D                ALLIED INVESTMENTS  
                                 LIMITED  
                                 Respondent

Member of Authority:    M B Loftus

Representatives:        Georgina Burness, Advocate for Applicant  
                                 Chris McDowall, on behalf of the Respondent

Submissions Received:    31 October 2013 from Applicant  
                                 11 November 2013 from Respondent

Date of Determination:    11 November 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]    On 7 October 2013 I issued a determination concluding Ms Wale had a personal grievance in that she was unjustifiably dismissed. She was unsuccessful with two other claims – namely that she had been unjustifiably disadvantaged in her employment and the victim of sexual discrimination.

[2]    Costs were reserved and Ms Wale now seeks recompense of those she incurred.

[3]    Normally the Authority will use a daily tariff approach when addressing a costs claim (refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808). The normal starting point is \$3,500 per day and from there adjustment may be made depending on the circumstances.

[4]    The hearing took just approximately half a day which would, applying the above formula, mean a contribution in the order of \$1,750.

[5] Ms Wale must be seeking less as her costs totalled \$1,500. This comprises \$500 for attending mediation, \$750 for the Authority hearing and a further \$250 being disbursements. There is no suggestion as to what an appropriate contribution might be and no argument supporting the claim.

[6] Allied's response is costs should lie where they fall as it also incurred significant costs. These should be balanced against those of Ms Wale as (a) she only succeeded with one of three claims and (b) she contributed to the situation in which she found herself.

[7] Addressing the application first. It is well accepted costs incurred in mediation are not reimbursable by the Authority. Similarly I cannot consider the disbursements given I have no idea what they are and, as a result, whether or not they are reasonable.

[8] That leaves representation costs for the hearing. On one hand they must, at less than half the accepted daily rate, be considered reasonable. On the other there is the fact a costs award is a contribution. Full indemnification is only considered in exceptional circumstances where the type of behaviours discussed in *Bradbury v Westpac Banking Corporation* [2009] 3 NZLR 400 are present. There was no such behaviour here.

[9] Turning to the response. Yes, Ms Wale only succeeded with one of three claims but it is improper to adopt a scorecard approach where the issues are intrinsically intertwined as they were here (*Bourne v Real Journeys Ltd* [2012] NZEmpC 2). The primary focus was the dismissal claim and in that respect Ms Wale was successful.

[10] Similarly I accept Ms Wale contributed to her situation but that was addressed through a reduction in remedies. It is well established that costs are not to be used to punish which is what would occur should I take account of her contributory behaviour again.

[11] Ms Wale was successful with her primary claim. It is well accepted costs follow the event and a successful party can expect a contribution toward the costs incurred in attaining that success.

[12] Having considered the parties positions I conclude \$500 (five hundred dollars) appropriate and order Allied Investments Limited pay that amount to Ms Lisa Wale as a contribution toward costs

M B Loftus  
Member of the Employment Relations Authority