

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2012] NZERA Christchurch 159
5359922

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| BETWEEN | KATHERINE WATKINS Applicant | LORRAINE |
| A N D | CANTERBURY HEALTH BOARD Respondent | DISTRICT |

Member of Authority: Helen Doyle

Representatives: Jeff Goldstein, Counsel for Applicant
Penny Shaw, Advocate for Respondent

Submissions Received: 12 July 2012 for Applicant
30 July 2012 for Respondent

Date of Determination: 31 July 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] On 12 June 2012 the Authority determined a disadvantage personal grievance in favour of the applicant but did not order that she be redeployed to a position she had applied for. The Authority awarded compensation to the applicant.

[2] The Authority reserved the issue of costs and timetabled for an exchange of submissions as to costs.

[3] The Authority has now received costs submissions from Mr Goldstein on behalf of the applicant and Ms Shaw on behalf of the respondent. As I was not the member who determined the substantive matter, I have had careful regard to the statement of problem, statement in reply, submissions and the determination alongside the cost submissions lodged by the parties.

Applicant's submissions

[4] Mr Goldstein submits that the applicant was successful in her application that she had been unjustifiably disadvantaged and therefore is entitled to an award of costs. He sets out the basic tenets when considering costs set out in the full Court of the Employment Court judgment of *PBO (formerly Rush Security Limited) v de Cruz* [2001] 1 ERNZ 808. The investigation was completed in one day and the applicant's actual costs were \$9,000 plus GST together with a filing fee of \$71.56. Mr Goldstein also claims a disbursement for a hearing fee of \$612 although the Authority is not clear on this claim as the matter was able to be concluded within a day. If this was not put in submissions by error then I reserve leave for Mr Goldstein to return to the Authority with further information. Mr Goldstein submits that costs should be awarded for the daily tariff now recognised by the Authority of \$3,500 together with the disbursements.

Respondent's submission

[5] Ms Shaw submits that the applicant sought two outcomes from the proceedings. One of these was that she be permanently redeployed to a position at Hillmorton, and the other, that she receive compensation. Ms Shaw submits that the primary claim was the claim for redeployment and that on that basis a relatively urgent substantive investigation meeting was accommodated and the majority of written and oral evidence related to this aspect to the claim which was unsuccessful. Ms Shaw submits that the respondent's actual costs were \$9,000 plus GST and submits that where each party has been successful, costs should lie where they fall.

Determination

[6] The usual rule is that costs follow the event unless there is a good reason to deprive a successful party of costs. I do not find that there are good reasons in this case not to make an award of costs in the applicant's favour. The applicant did have some success. I have had regard to Ms Shaw's submissions. I accept that a significant claim for the applicant in this case was that she be redeployed into the position. I accept that as a result of that claim a date for an investigation meeting was given with some priority and that there was focus in submissions and evidence on this matter. In the circumstances of this case and consistent with the equity and good conscience jurisdiction of the Authority there should be some reflection that the

applicant was not successful with her claim that she be redeployed to a position in the costs award.

[7] Considering the matter as a whole, I find an adjustment of \$700 to the usual daily tariff of \$3500 would be fair. I order Christchurch District Health Board to pay to Katherine Watkins the sum of \$2800 together with a filing fee of \$71.56 being costs and disbursements in this matter. Leave is reserved for Mr Goldstein to return to the Authority if there is a hearing fee disbursement.

Helen Doyle
Member of the Employment Relations Authority