

**IN THE EMPLOYMENT RELATIONS AUTHORITY**

**CHRISTCHURCH**

[2017] NZERA Christchurch 71

3000139

BETWEEN

TUI WESTRUPP

Applicant

AND

HELLYERS TRANSPORT  
LIMITED

Respondent

Member of Authority: Christine Hickey

Representatives: Elizabeth Dalton, Advocate for the Applicant  
Russell and Dorothy Hellyer, representing the  
Respondent

Costs submissions received: From the applicant on 7 April 2017  
No costs submissions received from the respondent

Determination: 8 May 2017

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] On 3 April 2017, I issued a determination that Hellyers Transport Limited (Hellyers) owed Mr Westrupp \$6,756.02 in unpaid wages, leave and KiwiSaver entitlements. I also ordered interest to be paid on the outstanding amount and the filing fee of \$71.56 to be paid to Mr Westrupp.

[2] I reserved my determination on the matter of representation costs and gave Ms Dalton 7 days to put costs submissions in if she wished to claim costs on Mr Westrupp's behalf.

[3] I gave Hellyers a further 7 days after that to make any submissions it wished to make. A copy of Ms Dalton's costs submissions was also sent to Employsure Limited, the company that was representing Hellyers at the time of the investigation meeting.

[4] Previously, Mr Nigel Hellyer told the Authority that Hellyers was going to be put into liquidation. As at 8 May 2017, the Companies Office website contains details of Hellyers as a listed company, which is not in liquidation.

[5] The Authority received Ms Dalton's costs submissions on 7 April 2017. Hellyers has not made any submissions on costs, despite having been sent the costs submissions and given two opportunities to make any submissions it wished to make. Therefore, I proceed to make my determination on costs in the absence of any submissions from Hellyers.

### **The law**

[6] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000.

[7] The principles the Authority applies are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*.<sup>1</sup> In *Fagotti v Acme & Co Limited*,<sup>2</sup> the Employment Court recently affirmed these principles.

[8] Costs principles include:

- a. A discretion on whether to award costs and if so what amount.

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<sup>1</sup> [2005] ERNZ 808, a judgment of the Full Court of the Employment Court, at page 819.

<sup>2</sup> [2015] NZEmpC 135

- b. The discretion must be exercised in accordance with principle and not arbitrarily.
- c. The jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction.
- d. Equity and good conscience must be considered on a case-by-case basis.
- e. Costs should not be used as a punishment or an expression of disapproval of the unsuccessful party's conduct although conduct that increased costs unnecessarily can be taken into account in inflating or reducing an award.
- f. It is open to the Authority to consider whether all or any of the parties' costs were unnecessary or unreasonable.
- g. 'Without prejudice' offers can be taken into account.
- h. Awards of costs will be modest, and must be reasonable.
- i. Frequently costs are judged against a notional daily rate.
- j. Costs generally follow the event; that is, the successful party's costs are likely to be ordered paid by the unsuccessful party.
- k. The nature of the case can also influence costs. That means that the Authority orders that costs lie where they fall in certain circumstances.

### **The claim**

[9] Ms Dalton's full costs are \$2,865.40, including GST. She claims that the appropriate award of costs is either the full amount, or \$2,250.00, exactly half of a full day's costs tariff.

[10] The total investigation meeting time was 1.25 hours, out of a possible full day of 6 hours; that is, about 21% of a full day. If I award costs based simply on a percentage of the full day the amount would be \$945.00. However, I consider Ms Dalton had to do more work than is reflected in that amount. Ms Dalton prepared careful documentation setting out Mr Westrupp's claim, including mathematical calculations that demonstrated why the calculations by Hellyers' accountant of the amount owed were incorrect. Ms Dalton drafted the proceedings, made amendments to the statement of problem, as directed, attended a

telephone conference and provided a useful bundle of documents for the investigation meeting.

**Conclusion**

[11] I consider that a costs award of \$2,000.00, including GST, is reasonable, and that is what Hellyers must pay Mr Westrupp.

Christine Hickey  
Member of the Employment Relations Authority