

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2020] NZERA 353
3081633

BETWEEN KELLIMAREE BENNETT
Applicant

AND JEFF AND ANNETTE
BOLSTAD
Respondents

Member of Authority: Anna Fitzgibbon

Representatives: David Flaws, advocate for the Applicant
Nanette Bolstad, advocate for the Respondent

Investigation Meeting: On the papers

Submissions [and further 13 August 2020 from the Applicant
Information] Received: 19 August 2020 from the Respondent

Date of Determination: 01 September 2020

COSTS DETERMINATION OF THE AUTHORITY

- A. The respondents, Mr Jeff Bolstad and Mrs Annette Bolstad must pay the applicant, Ms Kellimaree Bennett the sum of \$6,250 as a contribution to her reasonably incurred costs of representation.**

Substantive determination

[1] By determination on 29 July 2020, the Authority found that Ms Bennett had not had her employment affected to her disadvantage by any unjustifiable actions of Mr and Mrs Bolstad. The Authority found that Ms Bennett had been unjustifiably dismissed by Mr and Mrs Bolstad

and remedies were awarded to her.¹ Costs were reserved. The parties were invited to exchange memoranda as to costs.

Submissions as to costs

[2] Ms Bennett's advocate filed a memorandum as to costs seeking actual costs of \$6,440 together with the filing fee of \$71.56. The costs are based on an hourly rate of \$200 plus GST. Ms Bennett's advocate is seeking recovery of his costs for 28 hours of work including preparing for and attending the Investigation meeting. In the alternative, Ms Bennett's advocate seeks the sum of \$6,250. This amount is based on the Authority's daily tariff of \$4,500 for the first day of the investigation meeting and \$1750 for the second half day.

[3] In her memorandum in reply, the advocate for the Bolstads, seeks an 80% reduction in the Authority's daily rate. The reasoning is that the parties could have resolved this matter for a sum similar to that awarded by the Authority and because the Authority disallowed 80% of Ms Bennett's claims

Costs determination

[4] The Authority's power to award costs against a party is set out in clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) which provides as follows:

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.

[5] The Authority has a discretionary power to award costs which must be exercised on a principled basis.

[6] The principles and the approach adopted by the Authority on which an award of costs are made are well settled and outlined in *PBO Limited (formerly Rush Security Limited) v Da Cruz*.² Principles set out in *Da Cruz* include that costs are to be modest, not used as a punishment and

¹ *Bennett v Jeff and Annette Bolstad* [2020] NZERA 292

² [2005] 1 ERNZ 808

reasonable. As to quantification of costs, the principle is one of reasonable contribution to costs actually and reasonably incurred.

[7] The Authority's assessment of costs usually starts from a notional daily tariff which may be adjusted upwards or downwards to account for relevant factors or particular circumstances in the case. The applicable tariff is \$4,500 for the first day of an investigation meeting and \$3,500 for each day thereafter. For this one and a half day investigation meeting, the applicable tariff is \$6,250.

[8] Having considered the respective submissions made on behalf of the parties, I am not persuaded there should be a reduction in costs. Ms Bennett's remedy award was reduced by the Authority in its substantive determination to take in to account her contributory conduct. It would not be just to also adjust her award for costs. I find that Ms Bennett as the successful party is entitled to an award of costs in accordance with the normal tariff which I consider are reasonable.

[9] I order payment of the sum of \$6,250 to be paid by Mr and Mrs Bolstad to Ms Bennett within 28 days of the date of this determination.

Anna Fitzgibbon
Member of the Employment Relations Authority