

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2020] NZERA 539
3105172

BETWEEN

ROXANNE BEREA
Applicant

A N D

BEST HEALTH FOODS LIMITED
Respondent

Member of Authority: David G Beck

Representatives: Paul Brown, advocate for the Applicant
James (Yuan) Gu, for the Respondent

Investigation Meeting: On the papers

Submissions Received: 24 November 2020 from the Applicant
None from the Respondent

Date of Determination: 23 December 2020

COST DETERMINATION OF THE AUTHORITY

The Determination

- [1] On 17 November 2020 the Authority issued a determination finding that:
- a. Roxanne Berea was unjustifiably dismissed from her employment with Best Health Foods Limited.
 - b. Best Health Foods Limited were directed to pay Ms Berea lost wages in the sum of \$3,774.58 (gross) and compensation of \$12,000 pursuant to section 123 (1)(c)(i) Employment Relations Act 2000.

[2] The parties were asked to explore resolving costs by agreement but failed to do so.

Submission from Roxanne Berea

[3] Mr Brown briefly submitted that having successfully obtained an unjustified dismissal ruling his client seeks a contribution to costs of \$6,500, that is above the notional daily tariff (\$4,500). The suggested 'uplift' was made on the basis that Best Health Foods Limited turned down a timely Calderbank offer made on 4 June 2020 that did not exceed the amount Ms Berea obtained following an investigation meeting.

[4] No submission was received by Best Health Foods Limited.

Costs principles

[5] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000. The discretion it is accepted is guided by principles set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*¹ including: that costs are not to be used as a punishment or as a reflection on how either party conducted proceedings and that awards are to be made consistent with the equity and good conscience jurisdiction of the Authority.²

The settlement offer

[6] The making of a settlement offer in the form of a 'Calderbank' is a relevant factor when considering costs where such does not better the award made by the Authority. Here however, the content of the offer provided suggests that insufficient time was given for Best Health Foods Limited to respond (just one day) and the amount offered does not significantly differ from the Authority awards. I also have considered that this was not a particularly complex case for Ms Berea and Mr Brown's legal submission was brief in an area of fairly settled law.

Assessment

[7] However, a general principle for a successful party is that costs should 'follow the event' and here Roxanne Berea was wholly successful in her unjustified dismissal claim.

¹ *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

² Section 160(2) Employment Relations Act 2000.

[8] In these circumstances, I consider a slightly reduced daily tariff should apply as no extraordinary circumstances have been brought to my attention that would persuade me otherwise and this was a hearing of under a full day.

Award

[9] I order Best Health Foods Limited to pay Roxanne Berea the sum of \$3,500.00 as a contribution to her legal costs incurred.

David Beck
Member of the Employment Relations Authority