

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 60/09
5096007

BETWEEN KAYLENE BICKLEY
 Applicant

AND HALIFAX VET LIMITED
 Respondent

Member of Authority: Philip Cheyne

Representatives: No appearance for the Applicant
 Maree Kirk, Counsel for the Respondent

Submissions Received: 6 November 2008 from the Respondent
 No submissions received from the Applicant

Determination: 8 May 2009

DETERMINATION OF THE AUTHORITY

[1] In a determination dated 26 June 2008 I dismissed Mrs Bickley's personal grievance claim and upheld a small part of the counter-claim against her by her former employer. Costs were reserved.

[2] On 6 November 2008 the Authority received a memorandum from counsel for the respondent setting out a claim for costs. By that time, counsel who had acted for the applicant in the substantive proceedings was no longer instructed and the applicant no longer lived in Nelson. The respondent was directed to serve the memorandum and the applicant was permitted 14 days to reply. There is an affidavit of service on the file that shows that the memorandum was served on the applicant on 18 March 2009. When nothing was received from the applicant, the Authority wrote to her at the service address asking her to forward any submissions within 14 days. There has been no response from the applicant. In these circumstances, this determination resolves the issue of costs.

[3] Relevant principles are enunciated in *PBO Ltd (Formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808. Those principles include: the discretion to award costs is exercised in accordance with principle, not arbitrarily; equity and good conscience is to be considered on a case by case basis; costs are not to be used as a punishment or expression of disapproval of the unsuccessful party's conduct; awards will be modest; frequently costs are judged against a notional daily rate; and the nature of a case can influence costs.

[4] In the present case there is no reason to depart from the principle that costs should follow the event. Halifax Vet Limited was wholly successful defending the grievance claim and partly successful with its counter-claim so is entitled to an award of costs.

[5] The respondent's submissions disclose a proposal discussed between counsel to pay costs of \$2,500.00. That was documented and sent to the applicant for her signature but nothing more happened. Now, the respondent says that it should have an award of costs in the sum of \$3,000.00. Its true costs are apparently much more. The claim for costs is reasonable in light of the matter taking more than one day but less than two and its factual complexity so I will award it in full.

[6] I am asked to order interest on the costs award. That falls outside the power of the Authority since there was no legal obligation on the applicant to pay anything in costs until fixed by this determination. If it is necessary for the respondent to enforce this order, it will be able to seek interest from today's date. In her memorandum counsel also asks for a compliance order in respect of the order made in the original determination that Mrs Bickley must pay damages of \$100.00. What is sought is a compliance order where there has been non compliance with an order or determination of the Authority: see S.137(1)(b) of the Employment Relations Act 2000. In that situation the Authority may by order in or in conjunction with *any matter before the Authority ...to which that person is a party ...* require that person to do any specified thing to prevent further non-compliance: see S.137(2) of the Employment Relations Act 2000. The difficulty for the respondent here is that the matter to which Mrs Bickley is a party only remains before the Authority in respect of the reserved question of costs but is otherwise disposed of and no longer before the Authority. A compliance order is one of the ways to enforce a determination but a fresh application would be required.

Summary

[7] Kaylene Bickley must pay costs of \$3,000.00 to Halifax Vet Limited.

Philip Cheyne
Member of the Employment Relations Authority