

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2021] NZERA 480
3127956

BETWEEN PHATCHARIN CHARUMEE
Applicant

A N D THAI HOLDINGS LIMITED
Respondent

Member of Authority: David G Beck

Representatives: Chrissy Gordon, advocate for the Applicant
Phillip de Wattignar, advocate for the Respondent

Investigation Meeting: On the papers

Submissions Received: 22 October 2021 from the Applicant
26 October 2021 from the Respondent

Date of Determination: 1 November 2021

COST DETERMINATION OF THE AUTHORITY

The Determination

[1] On 4 October 2021 the Authority issued a determination finding that:

- (a) Phatcharin Charumee was unjustifiably dismissed in a procedurally unfair manner.

(b) Thai Holdings Limited failed to adhere to good faith obligations in effecting the dismissal.

(c) In the circumstances Thai Holdings Limited must pay Phatcharin Charumee the sums below:

(i) \$9,360 gross lost wages pursuant to s 123(1)(b) of the Act;

(ii) \$3,709.73 gross combined final pay/holiday pay; and

(iii) \$7,500 compensation pursuant to s 123(1)(c)(i) of the Act.

[2] The parties were asked to explore resolving costs by agreement but failed to do so. The investigation meeting took place over one day and written submissions were received thereafter.

Submission for Phatcharin Charumee

[3] Ms Gordon briefly submitted that having successfully obtained an unjustified dismissal ruling her client was due a costs contribution above the normal daily tariff and reimbursement of the Authority filing fee. A suggested 'uplift' of \$3,000 above the normal daily tariff of \$4,500 was made without any supporting arguments for such. Ms Gordon attached to her submission a partial summary of hours and billed amounts related only to the period post the investigation meeting; amounting to \$3,259.

Submission for Thai Holdings Limited

[4] Mr de Wattignar responded with a similarly brief submission pointing out that Ms Charumee had not been wholly successful in her claims as her compensatory amount was reduced by 25% to reflect her contribution to the circumstances that gave rise to the personal grievance. Overall, Mr de Wattignar submitted that the uplift amounting to a total sought of \$7,500, constituted an amount "not within the range of a reasonable contribution to costs". Mr de Wattignar indicated that Thai Holdings Limited were prepared to incur an award of the daily tariff being \$4,500.

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

Assessment

[6] A general principle for a successful party is that costs should 'follow the event' and here Ms Charumee was moderately successful in her unjustified dismissal claim albeit that her remedies were reduced for contributory conduct, in an investigation meeting that took a day as well as the need to consider further material and legal submissions.

[7] In these circumstances, I agree with Mr de Wattignar and consider the normal daily tariff should apply as no extraordinary circumstances have been brought to my attention that would persuade me otherwise.

Award

[8] I order Thai Holdings Limited to pay Phatcharin Charumee the sum of \$4,500.00 as a contribution to her legal costs incurred and a filing fee of \$71.56

David G Beck
Member of the Employment Relations Authority

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

² Section 160(2) Employment Relations Act 2000.