

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2020] NZERA 317  
3091232

BETWEEN

VERNON COETZEE  
Applicant

A N D

OAMARU MEATS LIMITED  
Respondent

Member of Authority: David G Beck

Representatives: David Balfour, advocate for the Applicant  
Louise Laming, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 22 July and 6 August from the Applicant  
29 July from the Respondent

Date of Determination: 12 August 2020

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**COST DETERMINATION OF THE AUTHORITY**

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**The Determination**

[1] On 9 July 2020 the Authority issued a preliminary determination finding that:

**Mr Coetzee cannot pursue his personal grievance. He is prevented from doing so by the settlement agreement he sought and freely entered into. Accord and satisfaction is established and this also acts as an estoppel preventing further litigation proceedings.**

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

### **Submissions from Oamaru Meats Limited**

[3] Oamaru Meats' counsel, Ms Laming, submitted that having successfully resisted Mr Coetzee's claim 'at the first hurdle' they seek a contribution to costs of \$4,500 (the notional daily tariff) out of actual costs rendered of \$5,848.45 plus GST (excluding costs incurred in attending mediation) in accord with the principles set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>1</sup> and on the basis that although the matter was heard 'on the papers' it involved the preparation and presentation of relatively complex written and oral legal submissions and affidavit evidence that was extended in content by the necessity to respond to Mr Coetzee's various affidavits in reply as directed by the Authority .

### **Submissions from Mr Coetzee**

[4] Mr Coetzee's advocate Mr Balfour made a brief submission that his client was intending to refer the matter to the Employment Court and would be seeking a stay on costs proceedings. Further, Mr Balfour suggested that a concluding Authority observation in the determination that "the manner of concluding the settlement agreement was not ideal" implies costs should lie where they fall.

### **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 *Da Cruz* one being that costs are not to be used as a punishment or as reflection of how either party conducted proceedings and that awards are to be made consistent with the equity and good conscience jurisdiction of the Authority.<sup>2</sup>

### **Assessment**

[6] A general principle for a successful party is that costs should 'follow the event' and here Oamaru Meats Limited were wholly successful on a preliminary issue that prevented Mr Coetzee's claim proceeding and are entitled to a contribution to their costs of representation that had to be incurred due to the complexity of the issues involved. The matters at issue were finely balanced and involved issues of general

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

<sup>2</sup> Section 160(2) Employment Relations Act 2000.

principle. Nevertheless, the successful party is entitled to a contribution to costs incurred and here a modest sum is sought. I have no evidence of Mr Coetzee's financial circumstances other than he is a moderately paid skilled worker and recent immigrant moving toward resident status. I also take into account that Mr Coetzee was pursuing a matter of principle that he genuinely felt passionate about given that his employment termination was not blameworthy and that he followed legal advice in pursuit of such.

[7] In these circumstances, whilst rejecting the notion of letting costs lie where they fall as being inequitable, I exercise a positive discretion in Mr Coetzee's favour and intend to award a sum less than that sought by Oamaru Meats Limited.

### **Award**

[8] I order Mr Coetzee to pay Oamaru Meats Limited the sum of \$2,000.00 as a contribution to the legal costs incurred.

David G Beck  
Member of the Employment Relations Authority