

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2012] NZERA Christchurch 50  
5298426

BETWEEN

TANYA COOPER  
Applicant

A N D

CHRISTCHURCH CASINOS  
LIMITED  
Respondent

Member of Authority: Helen Doyle

Representatives: John-Luke Day, Counsel for Applicant  
Penny Shaw, Counsel for Respondent

Submissions Received: 8 February 2012 from Applicant  
8 March 2012 from Respondent

Date of Determination: 23 March 2012

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In my determination dated 20 January 2012 I found that the applicant had made out her complaint under the Parental Leave and Employment Protection Act 1987 and I awarded lost wages and compensation in the sum of \$12,000.

[2] I reserved the issue of costs and both the applicant and respondent have now lodged submissions as to costs.

**Applicant's submissions**

[3] The applicant refers to the Employment Court judgment in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808 and the basic tenets that the Authority is to consider when awarding costs. The Authority has discretion as to whether costs are awarded and, in what amount, and can consider whether all or any costs are unnecessary or unreasonable. Costs generally follow the event and are

frequently judged against a notional daily rate that the Authority in a recent review assessed at \$3,500.

[4] The applicant has incurred costs of approximately \$16,000 plus GST and disbursements. A printout from the bill history is annexed to the memorandum. It is submitted on the applicant's behalf that the proceedings involved fairly complex issues with a business restructuring, issues as to whether the applicant was dismissed or whether she resigned, whether the position was genuinely redundant and whether the process was fair and reasonable in accordance with good faith and obligations, duties and rights under the Parental Leave and Employment Protection Act 1987.

[5] It is submitted by Mr Day that the Authority should take as a starting point a notional tariff of \$2,000 per day and then increase costs depending on the circumstances of the case. Mr Day submits costs should be calculated at a notional daily recovery rate of \$2,500 per day for hearing and preparation time for a period of four days where the hearing took one day and the following day was used to draft and file final submissions and counsel submits that \$10,000 would be a fair award.

#### **The respondent's submission**

[6] Ms Shaw on behalf of the respondent confirms that the principles in *PBO Ltd* are the relevant ones to be considered in this case, but disputes that this was a complex matter. Ms Shaw sets out that the matter only involved one hearing day and that the applicant's two witnesses, including herself, had relatively brief witness statements. Ms Shaw submits that a fee to the applicant of \$16,000 is unreasonable.

[7] The respondent accepts that costs should follow the event and does not dispute \$2,500 would be appropriate, but only on the basis that it is awarded for the one hearing day only, which takes into account preparation time.

#### **Determination**

[8] This matter was originally set down for two days but the evidence only occupied one day. There were two witnesses for the applicant and four for the respondent although a fifth prepared a statement of evidence but was not able to attend the investigation meeting.

[9] Following the investigation meeting full submissions were received from both parties. Ms Shaw submits that the overall costs are unreasonable. It is likely looking at the bill history the costs included attendance at mediation.

[10] In the exercise of my discretion I consider it appropriate to start with the daily tariff now recognised as \$3,500 not \$2,500 put forward by Mr Day. There is no unfairness to the respondent in doing this because the costs actually incurred considerably exceed that amount. An adjustment can be made to the daily tariff depending on the circumstances but if there is no adjustment then the daily tariff includes allowance for preparation and meeting time.

[11] In the exercise of my discretion I have considered whether there should be any further adjustment. The case itself was important to both parties and there was no conduct by either party that unduly increased costs. There were some elements of legal and factual complexity. Both applicant and respondent prepared careful and helpful submissions following the investigation meeting, the applicant's comprising of 22 pages was accompanied by a bundle of documents. These submissions were of assistance to the Authority. In the exercise of my discretion as to costs it is fair and reasonable to adjust upwards for preparation of the submissions. It is the sort of case where submissions were particularly helpful. I make an adjustment upward of \$1500 that I assess as six hours work at \$250 per hour for those submissions. Taking that adjustment into account I find a fair and reasonable award of costs is the sum of \$5000.

[12] I order Christchurch Casinos Limited to pay Tanya Cooper the sum of \$5000 being costs.

Helen Doyle  
Member of the Employment Relations Authority