

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2022] NZERA 139  
3146741

BETWEEN                      GARY COTTON  
Applicant

A N D                              DARCEE GOSLING  
Respondent

Member of Authority:        David G Beck

Representatives:              Lawrence Anderson, advocate for the Applicant  
Darcee Gosling, Respondent

Investigation Meeting:        On the papers

Submissions Received:        24 March 2022 from the Applicant

None from the Respondent

Date of Determination:        12 April 2022

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**COST DETERMINATION OF THE AUTHORITY**

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## **The Determination**

[1] On 16 March 2022 following a two-hour investigation meeting on 25 February 2022, the Authority issued a determination finding that Darcee Gosling employed Gary Cotton and that:

(a) Gary Cotton was unjustifiably dismissed and disadvantaged by the way his employment with Darcee Gosling ended.

(b) Darcee Gosling must pay Gary Cotton:

(i) \$10,010 gross lost wages.

(ii) \$830.45 arrears of wages.

(iii) \$131.12 gross unpaid holiday pay.

(iv) \$8,000 compensation without deduction under s 123(1)(c)(i) of the Employment Relations Act 2000.

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

## **Submission from Mr Cotton**

[3] Mr Anderson briefly submitted that having successfully obtained an unjustified dismissal ruling his client seeks a contribution to costs of \$2,250, reimbursement of the filing fee of \$71.56 and incidentals (printing costs) of \$21.43.

[4] Mr Anderson's submission was that a half day of the notional daily tariff (\$4,500) was appropriate given the Authority insisted on the production of written submissions due to Mr Gosling not being prepared enough to deliver a submission during the investigation meeting and his otherwise no-participation in proceedings up to the investigation meeting.

[5] No cost submission was received from Mr Gosling in the timeframe stipulated.

## **Costs principles**

[6] 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*<sup>1</sup> these include: 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.<sup>2</sup>

### **Assessment**

[7] A general principle for a successful party is costs should 'follow the event' and here Mr Cotton was successful in his assertion that Darcee Gosling employed him and his unjustified dismissal and disadvantage claims.

[8] In these circumstances, I do consider that half the daily tariff should apply as the written submissions Mr Anderson referred to were essential to my consideration of Mr Cotton's case.

### **Award**

[9] I order Darcee Gosling to pay Gary Cotton the sum of \$2,250 as a contribution to Mr Cotton's legal costs and to pay him the Authority filing fee of \$71.56. I decline to award additional disbursements.

David G Beck  
Member of the Employment Relations Authority

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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.