

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2016] NZERA Wellington 149
5525001

BETWEEN LYNN CROZIER
Applicant
AND IDEA SERVICES LIMITED
Respondent

Member of Authority: Vicki Campbell
Representatives: Graeme Ogilvy for Applicant
Paul McBride for Respondent
Submissions received: 22 and 31 October and 4 November 2016 from
Applicant
25 October and 4 November 2016 from Respondent
Determination: 5 December 2016

COSTS DETERMINATION OF THE AUTHORITY

- A. IDEA Services Limited is ordered to pay to Ms Crozier costs in the amount of \$3,046.05 within 14 days of the date of this determination.**

[1] In a determination dated 7 October 2016¹ I held one or more conditions of Ms Crozier's employment was affected to her disadvantage as a result of unlawful discrimination and was unjustifiably dismissed.

[2] I reserved costs, indicating that if the parties were unable to resolve that issue, both parties would have the opportunity to file cost memoranda and evidence. These have now been received by the Authority for consideration.

¹ [2016] NZERA Wellington 125.

[3] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event.

Determination of costs

[4] Under normal circumstances the Authority would apply a starting point of a notional daily tariff for quantifying costs.

[5] Ms Crozier was legally aided. Total fees invoiced to Legal Aid Services, Ministry of Justice were \$3,046.05 (GST inclusive). Ms Crozier seeks payment of the total sum invoiced and approved by Legal Aid Services which is less than the daily tariff plus disbursements.

[6] Mr Ogilvy erred in his original application for costs claiming the sum of \$2,330.50 under the misapprehension that this was the total sum approved for payment. Mr McBride notified the Authority that the respondent consented to the award of \$2,330.50 which, at the time, was the full amount awarded by Legal Aid Services.

[7] When Mr Ogilvy discovered his error he amended his application to include the correct amount which the respondent now opposes on the basis that if the Authority awards the full amount it would amount to indemnity costs.

[8] The assessment of an appropriate contribution to costs in the Authority requires a different approach to assessing costs to that used by the Employment Court.² As noted in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*³ awards in the Authority will be modest taking into account conduct which increases costs unnecessarily.

[9] As noted by the Court in *Stevens v Hapag-Lloyd (NZ) Ltd* proceedings in the Authority are intended to be low level, cost effective, readily accessible and non-technical.⁴ Also of relevance is the comment by the Court that:⁵

parties who elect to incur costs that are likely to exceed the Authority's notional daily rate are entitled to do so but cannot confidently expect to recoup any additional sums.

² *Booth v Big Kahuna Holdings Limited* [2015] NZEmpC 4 at [6].

³ (2006) 7 NZELC 98,128; [\[2005\] ERNZ 808](#); (2005) 3 NZELR 1 (EMC).

⁴ [2015] NZEmpC 28 at[94] and cited with approval in *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [107].

⁵ *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [108].

[10] The daily tariff applying to this matter is \$3,500. The matter took a full hearing day.

[11] I have considered carefully the submissions of the respondent on the level of costs to be awarded in this case. The total costs sought by Ms Crozier does not take into account the low level of costs available to a legal aid recipient.

[12] I am satisfied the amount of \$3,046.05 is a reasonable costs award in the circumstances of this case and is below the standard daily tariff. IDEA Services Limited is ordered to pay to Ms Crozier costs in the amount of \$3,046.05 within 14 days of the date of this determination.

Vicki Campbell
Member of the Employment Relations Authority