New Zealand Employment Relations Authority Decisions

Culling v Vine-Tech Contracting Limited (Christchurch) [2011] NZERA 936; [2011] NZERA Christchurch 134 (14 September 2011)

Last Updated: 24 April 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2011] NZERA Christchurch 134
5329882

BETWEEN INGER PAULINE CULLING Applicant

A N D VINE-TECH CONTRACTING LIMITED

Respondent

Member of Authority: M B Loftus

Representatives: Mary Flannery, Counsel for the Applicant

Diana Hudson, Counsel for the Respondent

Submissions received: 19 August 2011 from the Applicant

31 August 2011 from the Respondent

Determination: 14 September 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 22 July 2011 I upheld Ms Culling's claim that she had been unjustifiably dismissed by Vine-Tech Contracting Limited.

[2] The issue of costs was reserved with Ms Culling, as the successful party, being advised that if she wished to seek a contribution toward her costs, she should do so via a written application. She does.

[3] Ms Culling seeks the sum of $3,988.00, along with a further $305.98 as recompense of disbursements.

[4] This is the total sum incurred after deducting the amount spent on counsel's attendance at mediation which she accepts is not claimable (refer *Trotter v Telecom Corp of NZ Ltd* [1993] NZEmpC 173; [1993] 2 ERNZ 935, 937). It does, however, include counsel's attendance at the meeting at which Ms Culling was dismissed, along with disbursements incurred prior to filing in the Authority. Neither of these may be

recompensible given the principles enunciated in *Trotter v Telecom*. The costs incurred since filing amount to $2,650 plus GST and disbursements of $266.48.

[5] In support of the application it is noted that Counsel spent some 14 hours on the matter and submitted that that was realistic and reasonable in the circumstances.

[6] Vine-Tech acknowledges liability given Ms Culling's success but contends that the contribution sought is excessive given what was approximately a half day hearing with only one witness. It is further submitted that the claim lacks specificity and that a lot of the preparation would have been necessary for the mediation and is not, therefore, claimable.

[7] Normally the Authority will assess costs on a daily tariff basis: refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] NZEmpC 144; [2005] ERNZ 808. In assessing that tariff a common starting point is $3,000 per day: refer *Chief Executive of the Department of Corrections v Tawhiwhirangi (No 2)* [2008] ERNZ 73. From that point adjustment may occur depending on the circumstances.

[8] As was indicated above, the hearing took approximately half a day. Applying

Da Cruz and *Tawhiwhirangi (No 2)* the award would be $1,500.

[9] While Ms Culling states that she relies on the principles referred to in *PBO v Da Cruz* there is no argument as to why I should deviate from the normal daily tariff other than the assertion that the costs incurred were reasonable. That is not, in my view, an argument that sways me toward accepting what is, given the concession that costs attributable to mediation are irrecoverable, a claim for full solicitor / client costs.

[10] Conversely there is little argued in support of a reduced tariff other than the lack of specificity. Applying the accepted principles and rates nullifies that argument.

[11] Given the above, I consider it appropriate to order Vine-Tech to pay Ms Culling the sum of $1,500 (fifteen hundred dollars) as a contribution toward her costs.

Mike Loftus

Member of the Employment Relations Authority
