

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2022] NZERA 462
3137481

BETWEEN ALISON DANKS
Applicant
AND PAK HOLDINGS LIMITED
Respondent

Member of Authority: Sarah Kennedy
Representatives: Michael Fennessy, counsel for the Applicant
Jenny Murphy, advocate for the Respondent
Submissions Received: 30 August 2022 from the Applicant
9 September 2022 from the Respondent
Date of Determination: 16 September 2022

COSTS DETERMINATION OF THE AUTHORITY

Costs

[1] Alison Danks the applicant, has filed an application for an order for payment of costs that she incurred in pursuing a personal grievance against the respondent, PAK Holdings Limited. In my determination dated 16 August 2022, Ms Danks succeeded in her claims for unjustified dismissal, lost wages and compensation.¹

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

Costs principles

[3] The Authority's jurisdiction to order a party to pay reasonable costs and expenses is exercised by applying some well established principles to the particular circumstances of the

¹ *Alison Danks v PAK Holdings Limited* [2022] NZERA 394.

case.² Those principles recognise that a successful party should receive a contribution to costs reasonably incurred in reaching that result; costs are discretionary and should generally be modest and may not be used to punish an unsuccessful party; the nature of the case may allow for an order that costs lie where they fall; and the Authority may use a notional “daily rate” or “tariff” as a starting point to assess costs.

[4] Undue rigidity in applying that tariff is avoided by upward or downward adjustments appropriate to the particular case. Those adjustments may account for a liable party’s means to pay costs, the preparation required in particularly complex matters and where the conduct of parties has unnecessarily increased costs.³

[5] The Authority’s current tariff for a one-day investigation meeting is \$4,500.00. This amount is taken as an appropriate starting point for assessing a reasonable contribution to the costs incurred by a party in preparing for and taking part in an investigation meeting.

Applicant’s submission

[6] Ms Danks view is that costs should follow the event and that it is clear that PAK holdings did not comply with its obligations during a redundancy process. Had it done so it is likely she would not have been concerned there was an ulterior motive and may not have raised a personal grievance or made an application to the Court.

Respondent’s submission

[7] PAK’s submissions centred on it’s belief that the additional disclosure it had to provide for the purposes of the investigation meeting was an additional expense it should not have been put to, that rebuttal evidence was required because of the additional disclosure and the majority of the investigation meeting was spent on whether there were genuine business reasons for the redundancy. Because an ulterior motive was not established by Ms Danks both parties had equal success and costs should lie where they fall.

Assessment

[8] The investigation meeting took one day. The additional disclosure was relevant to the claim and necessary for the investigation. There was a finding of unjustified dismissal and the

² Employment Relations Act 2000, Schedule 2, clause 15 and *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme and Co Limited* [2015] NZEmpC 135 at 106-108.

³ Above n2.

procedural breaches were not insignificant. On that basis I do not consider the parties to have had equal success. Weighing the relevant principles referred to above, having been successful, Ms Danks is entitled to a contribution towards her costs. I consider that costs based on one day's hearing time of \$4500.00 and a filing fee of \$71.56 is appropriate.

Order

[9] PAK Holdings Limited is ordered to pay Alison Danks the sum of \$4500.00 as a contribution towards her costs, together with the filing fee of \$71.56 within 28 days of this determination.

Sarah Kennedy
Member of the Employment Relations Authority