

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2014] NZERA Wellington 39
5428558

BETWEEN STACEY MARLENE DEAN
 Applicant

AND THE SURVEYING COMPANY
 H.B. LIMITED
 Respondent

Member of Authority: Trish MacKinnon

Representatives: Stacey Dean on her own behalf
 Doug Abraham for the Respondent

Submissions received: 14 March 2014 from the Applicant
 28 February and 20 March 2014 from the Respondent

Determination: 23 April 2014

COSTS DETERMINATION OF THE AUTHORITY

[1] Stacey Dean's claims, including those for unjustifiable dismissal, duress and discrimination, failed in the Authority. The determination issued on 17 December 2013¹ reserved the issue of costs. The Surveying Company H.B. Limited (The Surveying Company) now seeks to recover its full costs in the sum of \$3,367.86.

[2] In support of its submission the respondent, through Mr Abraham, cites its own exemplary conduct throughout the Authority's process. It compares that conduct with Ms Dean's, which it alleges lacked good faith. It notes her failure to participate in the process, in particular, her non-attendance on a teleconference with the Authority and at the investigation meeting.

[3] The Surveying Company refers to its offer to settle the matter as evidence of its good faith, despite believing Ms Dean had no grounds for her personal grievance.

¹ [2013] NZERA Wellington 160

It provided evidence of its offer of \$500 which was made on a *without prejudice* basis on 10 September 2013 and rejected by Ms Dean on 18 September 2013. The Surveying Company has also provided invoices to support the amount it seeks as reimbursement of its costs. Those costs appear reasonable and moderate in relation to the work undertaken.

[4] Ms Dean submits it would be unjust to make her pay the respondent's costs. It was The Surveying Company's choice to engage representation, and she should not be expected to pay for that choice. She claims the respondent's communications were unclear throughout the process leading up to the hearing.

[5] Ms Dean further submits that she is unable to pay costs as she has not been able to find work since her dismissal by the respondent, and has debt. She has provided no documentary evidence of her financial situation.

[6] In response, Mr Abraham submits that Ms Dean's claim to poverty is undermined by the fact that she was on holiday overseas in the lead up to, and at the time of, the investigation meeting. It also notes the right of The Surveying Company to engage representation to defend itself in the matter.

[7] The Authority's discretion to award costs arises from clause 15 of Schedule 2 to the Employment Relations Act 2000. The principles relevant to costs awards are well-settled and are outlined in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*². I shall not reiterate the principles here but note that I have applied them when determining costs after considering the submissions of the parties.

[8] Costs normally follow the event and there is no reason for them not to do so in this instance. Ms Dean chose to pursue a personal grievance, while taking little part in the process she commenced in the Authority and it is only fair that she contribute to the costs incurred by her former employer. I note that one of the principles in the *Da Cruz* case referred to above is that costs are modest. Accordingly I decline to award the full costs incurred by the respondent as sought on its behalf by Mr Abraham.

[9] I have disregarded the offer made to Ms Dean on 10 September 2013 to resolve her personal grievance. Had it been made as a *Calderbank* offer, i.e. *without prejudice except as to costs*, I would have considered it. It was not, however. It was

² [2005] 1 ERNZ 808

made on a *without prejudice* basis through the Ministry of Business, Innovation and Employment's Mediation Service. As such, I find it would not be appropriate for me to take the offer into account.

[10] The investigation meeting was short and took less than half a day. Taking all the circumstances into account I find it appropriate that Ms Dean should contribute \$1,750 towards the respondent's costs.

Determination

[11] I order Ms Dean to pay to the respondent, The Surveying Company H.B. Limited, the sum of \$1,750 in costs.

Trish MacKinnon
Member of the Employment Relations Authority