

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 70
5519628

BETWEEN KINGI DELAMERE
 Applicant

AND ASALEO CARE NEW
 ZEALAND LIMITED
 Respondent

Member of Authority: Vicki Campbell

Representatives: Tim Oldfield for Applicant
 David France for Respondent

Submissions received: 11 February 2015 from Applicant
 25 February 2015 from Respondent

Determination: 11 March 2015

COSTS DETERMINATION OF THE AUTHORITY

- A. Asaleo Care New Zealand Limited is ordered to pay to Mr Delamere the sum of \$5,250.00 within 14 days of the date of this determination.**
- B. Asaleo Care New Zealand Limited is ordered to reimburse Mr Delamere disbursements of \$284.68 within 14 days of the date of this determination.**

[1] In a determination dated 16 January 2015 ¹ I held Mr Delamere's dismissal was unjustified and ordered his reinstatement together with remedies which were reduced by 50% for contributory conduct.

[2] The question of costs was reserved. The parties have been unable to reach any agreement on costs and I am now in receipt of submissions from both parties.

¹ [2015] NZERA Auckland 12.

[3] Mr Delamere seeks reimbursement of the following:

- a) A contribution of \$12,500 towards his costs;
- b) \$1,311.64 in disbursements;
- c) \$1,035.80 for witness travel and expenses;
- d) \$500 in costs for preparation of the costs submissions.

[4] Asaleo Care New Zealand Limited (Asaleo Care) objects to the quantum of the costs sought by Mr Delamere. Asaleo Care submits an award of \$5,250.00 plus the filing fee of \$71.56 would constitute a reasonable contribution to Mr Delamere's costs.

[5] 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

[6] Under normal circumstances the Authority would apply a starting point of a notional daily tariff for quantifying costs which is \$3,500 for each day of the investigation meeting.

[7] The Authority has been provided with evidence that Mr Delamere incurred legal fees of \$17,874.45, disbursements of \$1,311.64 and travel and expenses for witnesses to travel to Auckland to prepare evidence of \$1,035.80.

[8] As held recently by the Employment Court, 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] The investigation meeting took one and a half hearing days. I was greatly assisted by the quality of the witness statements for both parties and the common

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).

bundle of documents which had been collated and prepared by Mr Oldfield on behalf of Mr Delamere.

[10] Mr Delamere was supported by his union throughout the disciplinary process and the Authority's investigation process. The Union instructed Mr Oldfield's firm to assist it in Mr Delamere's pursuit of his personal grievance. While it was not Mr Delamere, but the Union that incurred the costs associated with this matter, this is irrelevant to my determination.⁴

[11] I am not persuaded that I should depart from the daily tariff approach and consider it appropriate that Asaleo Care New Zealand Limited contribute to the costs incurred by Mr Delamere.

[12] I find there are no factors warranting either an increase or reduction from the daily tariff. As the investigation meeting took 1.5 days Asaleo Care New Zealand Limited is ordered to pay to Mr Delamere the sum of \$5,250.00 within 14 days of the date of this determination.

[13] I have considered whether Mr Delamere should be reimbursed for his disbursements relating to the travel and accommodation for Mr Oldfield and the travel costs of witnesses who travelled to Auckland to prepare their witness statements. Additional costs associated with engaging out-of-town Counsel will not generally be allowed on an application for costs⁵ and on this occasion I decline to award reimbursement of these costs.

[14] The claim for additional costs associated with drafting costs submissions is likewise rejected. To award additional costs is not consistent with the daily tariff approach applied by the Authority.

⁴ I have followed the decision of the Court in *IHC New Zealand Inc. v Scott*, Employment Court, Auckland AC45A/06, 18 October 2006, Perkins J, at [20].

⁵ *Wolfendon v The New Zealand Film and Television School Limited* [1999] 2 ERNZ 21 at [36]; *Booth v Big Kahuna Holdings Ltd* [2015] NZEmpC 4 at [15].

[15] I am satisfied the disbursements for photocopying, extra hearing time, and the filing fee were reasonably incurred and order Asaleo Care New Zealand Limited to reimburse Mr Delamere disbursements of \$284.68 within 14 days of the date of this determination.

Vicki Campbell
Member of the Employment Relations Authority