

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA28A/09  
5106214

	BETWEEN	LEANNE DUNCAN Applicant	
	AND	HARVEYS FLOORPRIDE LIMITED Respondent	
Member of Authority:	Philip Cheyne		
Representatives:	Pat Norris, Advocate for the Applicant J Levenbach, Counsel for the Respondent		
Submissions Received:	19 March 2009 from the Applicant No submissions received form the respondent		
Determination:	20 April 2009		

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**DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 10 March 2009 I upheld a personal grievance claim by Ms Duncan against her former employer and awarded remedies of compensation and lost remuneration. Costs were reserved for determination after written submissions in accordance with the timetable specified in the determination. Mr Norris lodged and served submissions on 19 March 2009. Nothing has been received from the respondent. This determination resolves the question of costs arising from the Authority's investigation.

[2] I note that the Authority support officer emailed counsel for the respondent on 8 April 2009 advising that the applicant's claim for costs would be dealt with after 14 April 2009, the last date for the respondent to provide submissions. While the respondent did not provide any submissions on costs, the Authority did receive from the Employment Court registry on 15 April 2009 a copy of a challenge filed by the respondent on 7 April 2009. The usual approach by the Authority is to fix costs regardless of any challenge to the Authority's determination. The respondent's challenge was filed by different counsel but the Authority was not advised by Mr Levenbach that he was no longer instructed and the timetable for costs submissions

was specified in the determination in any event so I see no reason to depart from the Authority's usual practice.

[3] Relevant principles are enunciated in *PBO Ltd (Formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808. Those principles include: the discretion to award costs is exercised in accordance with principle, not arbitrarily; equity and good conscience is to be considered on a case by case basis; costs are not to be used as a punishment or expression of disapproval of the unsuccessful party's conduct; awards will be modest; frequently costs are judged against a notional daily rate; and the nature of a case can influence costs.

[4] In the present case there is no reason to depart from the principle that costs should follow the event. Ms Duncan was the successful party and is entitled to an award of costs.

[5] Ms Duncan claims costs of \$15,430.78 and has provided copies of invoices supporting this claim. It is apparent that some of the professional work claimed for preceded the dismissal and some of it related to mediation, all of which is work that is usually regarded as immaterial for present purposes. In any event I do not intend to closely analyse the time claimed for because this case is one where there is no reason to depart from assessing costs on a daily tariff basis and where the award should be *modest* in accordance with the principles expressed by the Employment Court in *PBO Ltd*.

[6] A little less than a single day's investigation was required. Only Ms Duncan gave evidence supporting her claim while there were three witnesses for the respondent. It was necessary to consider events that occurred over several months time to get a reasonable background. The factual situation was of modest complexity and several significant factual disputes needed to be resolved. In these circumstances an appropriate award is \$2,500.00.

## **Conclusion**

[7] Harveys Floorpride Limited is to pay Ms Duncan costs of \$2,500.00

Philip Cheyne  
Member of the Employment Relations Authority