

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 233A/09
5139974

BETWEEN

JANINE DUNLOP
Applicant

AND

ENVIROSTATE LIMITED
Respondent

Member of Authority: Vicki Campbell

Representatives: Applicant in person
Callum Revfem for Respondent

Submissions Received: 11 August 2009 from Applicant
24 August 2009 from Respondent

Determination: 17 September 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 16 July 2009 I found Ms Dunlop had been unjustifiably dismissed by Envirostate Limited. Ms Dunlop was not successful in her claims for lost wages including a claim for the payment of a bonus and reimbursement of a benefit (company car). In my determination I reserved the question of costs and invited the parties to resolve the matter between them. They have been unable to do that and I am now in receipt of memorandum from both parties.

[2] The following principles are appropriate where the Authority is exercising its discretion in relation to costs (*PBO Ltd (formerly Rush Security Ltd) v Da Cruz*, [2005] 1 ERNZ 808):

- There is a discretion as to whether costs should be awarded and what amount;
- The discretion is to be exercised in accordance with principle;
- The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority;

- Equity and good conscience is to be considered on a case by case basis;
- Costs are not to be used as a punishment or as an expression of disapproval of an unsuccessful party's conduct although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award;
- It is open to the Authority to consider whether all or any of the parties costs were unnecessary or unreasonable;
- That costs generally follow the event;
- That without prejudice offers can be taken into account;
- That awards will be modest;
- That frequently costs are judged against a notional daily rate;
- The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[3] In addition, the Court has stated that there is nothing wrong with a tariff based approach so long as it is not applied in a rigid manner without regard to the particular characteristics of the case.

[4] While Ms Dunlop was unrepresented at the investigation meeting, she had sought legal advice with respect to her claims. Ms Dunlop seeks reimbursement of her legal fees of \$400.00 plus various disbursements which include flights for herself and a support person.

[5] This matter was not complex and the investigation meeting took less than one day. Ms Dunlop's legal fees were reasonable in the circumstances of this matter and I accept the airfares for her travel to the investigation meeting were a reasonably incurred cost of taking her claim to the Authority. Ms Dunlop moved to Christchurch after her dismissal in order to mitigate her losses and secure alternative employment.

[6] In exercising my discretion on a principled basis **I order Envirostate Limited to contribute \$250 towards Ms Dunlop's legal fees plus disbursements of \$284.50.**

Vicki Campbell
Member of Employment Relations Authority