

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2017] NZERA Christchurch 182
5624315

BETWEEN REBECCA EDMONDS
Applicant
A N D SOVEREIGN STAR LIMITED
Respondent

Member of Authority: Helen Doyle
Representatives: Michael O’Flaherty and Anthony Herring,
Counsel for Applicant
David Beck, Counsel for Respondent
Investigation Meeting:
Submissions Received: 28 September 2017 from Applicant
6 October 2017 from Respondent
Date of Determination: 26 October 2017

**DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

A Sovereign Star is ordered to pay to Rebecca Edmonds costs in the sum of \$7000.

Substantive Determination

[1] In a determination dated 8 September 2017 the Authority found that the applicant was unjustifiably dismissed and awarded remedies. The issue of costs was reserved and a timetable set for provision of submissions. The Authority has now received submissions as to costs from counsel for the applicant Mr Herring, and for the respondent, Mr Beck.

Applicant's submissions

[2] Mr Herring refers to *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*¹ and the principles therein which were recently affirmed by the full Court in *David Fogatti v Acme & Co Limited*.²

[3] Mr Herring submits that the appropriate starting point for costs is the Authority's notional daily tariff which at the relevant time was \$3,500 for each day of the investigation meeting. The matter before the Authority occupied two days. Mr Herring submits that the Authority should follow the usual principle that costs follow the event and that there are no circumstances which should result in the Authority ordering costs to lie where they fall.

[4] Mr Herring submits that whilst an award based on the notional daily tariff will not meet the applicant's actual legal costs it will make a fair and reasonable contribution to her expenses. Mr Herring noted that the applicant is yet to be invoiced but the value of the work in progress is \$40,378.50 and a reasonable fee for legal services will be invoiced to the applicant that will exceed \$7,000 plus GST and disbursements. He submits that the matter was a protracted and complicated one with significant documents provided. Mr Herring seeks an award based on the notional daily tariff of \$7,000.

The respondent's submissions

[5] Mr Beck on behalf of the respondent submits that costs should be reduced or should lie where they fall after traversing briefly some of the findings because of the applicant's attitude and behaviour towards the respondent throughout the dispute.

[6] He does in his submission quite properly recognise that costs are not to be used as a punishment or an expression of disapproval although conduct that increases costs can be taken into account.

[7] Mr Beck submits that the applicant's actual legal expenses which are yet to be invoiced are excessive. He submits that there were costs caused by the applicant's imprecise pleadings requiring additional directions, the initial resistance of providing medical records and some pre-hearing matters. Mr Beck further submits that the

¹ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808 .

² *David Fagotti v Acme & Co Limited* [2015] NZEmpC 135.

respondent has limited resources and suffered a loss in the year ending 31 March 2016. He submits that on the facts the applicant had no intention of returning to work and that if costs are not to lie where they fall then a fair award would be \$4,000 being half the notional daily tariff sought for a two day hearing.

Determination

[8] The discretion exercised by the Authority as to whether costs are awarded and if so in what amount is to be exercised in accordance with principle and not arbitrarily.

[9] The applicant was successful. The usual principle is that costs follow the event and there are no factors in this case why that principle should be departed from.

[10] There were some limited pre-hearing matters although I am not satisfied that viewed overall the cost of those was to the extent that it should be taken into account in the exercise of my discretion to reduce the daily tariff. The statement of problem was amended before a statement in reply was required to be lodged. Medical information was properly requested by the respondent and the fact that there was not full disclosure favoured more the respondent than the applicant.

[11] The conduct of counsel for both the applicant and the respondent during the Authority meeting was commendable in a matter not altogether straightforward. Cross examination was directed to the main points in issue. There was agreement that some witnesses did not need to be called which saved time and final submissions were succinct and to the point.

[12] The matters that Mr Beck refers to in support of a reduction to the daily tariff fall rather squarely into the category of punishment or disapproval and should not be taken into account to reduce the award of costs. Equity and good conscience considerations do not change that.

[13] I accept that the 2016 accounts of the respondent show a net loss but I am not satisfied that there is no ability to pay a cost award based on the notional daily tariff of \$7000 when assets such as bank account are considered as well. I consider an award of costs in the sum of \$7000 to be both fair and reasonable.

[14] Mr Herring in his submissions confirms that the applicant is to be invoiced for a sum above \$7000.

[15] I order Sovereign Star Limited to pay to Rebecca Edmonds costs in the sum of \$7000.

Helen Doyle
Member of the Employment Relations Authority