

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2013] NZERA Christchurch 23  
5333625

BETWEEN

ATARANGI GLEN  
Applicant

A N D

WILFRED INVESTMENTS  
LIMITED  
Respondent

Member of Authority: Helen Doyle

Representatives: Karina Coulston, Counsel for Applicant  
Angela Smalley, Advocate for Respondent

Submissions Received: 22 November 2012 from Applicant  
No submissions from Respondent

Date of Determination: 30 January 2013

---

**COSTS DETERMINATION OF THE AUTHORITY**

---

[1] In my determination dated 19 November 2012 I found the applicant was unjustifiably dismissed and ordered payments to her for lost wages and compensation. The respondent's counterclaims were dismissed together with a penalty claim. I reserved the issue of costs and timetabled for an exchange of submissions from the applicant by 6 December 2012, and the respondent by 17 January 2013. Submissions were received from Ms Coulston on behalf of the applicant by the due date but no submissions have been received from the respondent notwithstanding that a Support Officer from the Authority sent a reminder to the respondent's representatives on 22 November 2012 at the same time the applicant's submissions were forwarded.

[2] The Authority now intends to proceed to determine costs.

### **The applicant's submissions**

[3] This file and another file *Mokomoko and Harpur v La Famia Foundation NZ and La Famia No. 2 Limited* [2012] NZERA 242 were by agreement dealt with on four consecutive hearing days. The respondents share a common managing trustee/managing director and the applicants' employment relationship problems were linked in some key aspects. Consecutive hearing days meant the evidence from an applicant or respondent witness, when relevant to the other case, did not have to be given twice. Ms Coulston proposes in her submission that the Authority divide the hearing and preparation time for assessment of costs equally between both files to arrive at two hearing days for this applicant.

[4] Ms Coulston also submits that there were numerous and frivolous counterclaims, none of which were upheld, that unnecessarily prolonged the length of the hearing and added to the costs of the applicant. Ms Coulston submits that the applicant incurred \$12,700 in legal costs and that this was a complex matter with a number of witnesses and extensive documents. Ms Coulston submits that costs in the Authority can be calculated either by way of a daily tariff or charge-out rate and that the appropriate charge-out rate is \$250-\$300. Ms Coulston submits that an appropriate award for the applicant in this case would be the sum of \$10,000.

### **Determination**

[5] There is no good reason to depart from the usual principle that costs follow the event. The applicant was successful in obtaining a determination that her dismissal was unjustified. The respondent's counterclaim was unsuccessful. The applicant is entitled to costs.

[6] In exercising my discretion as to costs, I think it appropriate to divide the total hearing time of four days by three rather than two because that reflects that each of the three personal grievances had to be considered separately. For this applicant that will mean a hearing time of a little under a day and a half.

[7] There was no complexity about the personal grievance as it was relatively straightforward. There was complexity in the counterclaims against the applicant. The counterclaim Ms Glen was facing was significant and that added a level of complexity. Documents in support of the counterclaim were produced outside of the set timetable.

[8] The leading judgment in this area of costs is that of the full Court of the Employment Court in *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808. In that case the Court set out cost principles that it held were appropriate to the Authority and consistent with its functions and powers recognising that each case has to be considered in light of its own circumstances. These principles include a discretion as to whether costs are awarded and in what amount. Costs are not to be used as a punishment or an expression of disapproval and awards will be modest in the Authority. It was also recognised in *PBO* that frequently costs are judged against a notional daily rate. The Authority now recognises this as \$3,500.

[9] As a starting point there is no reason to depart from the usual daily tariff in assessing costs. The Authority can then consider any adjustments in a principled way up or down that need to be made to the tariff.

[10] On the basis of the daily tariff of \$3,500 for four days that is a total sum of \$14,000. On the basis that \$14,000 is divided by three, the daily tariff is \$4,666.66. I do accept that the counterclaims did add considerably to the costs of the applicant in hearing and preparation time. The counterclaim was unsuccessful and I make an adjustment upward of \$1,000 to the daily tariff to reflect that.

[11] In all the circumstances a fair and reasonable award for the applicant is the sum of \$5,666.66 together with disbursements. In this case there was a hearing fee incurred by all three applicants in the sum of \$306.66. A fair approach would be to divide that by three to arrive at the sum of \$102.22. The applicant is entitled to a disbursement for hearing fees in the sum of \$102.22 together with a filing fee of \$71.56.

[12] I order Wilfred Investments Limited to pay to Atarangi Glen the sum of \$5,666.66 being costs and \$173.78 being disbursements.

Helen Doyle  
Member of the Employment Relations Authority