

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2013] NZERA Wellington 85
5397694

BETWEEN ROBERT GILLETT-JACKSON
Applicant

A N D SINCLAIR PRYOR MOTORS
LIMITED
Respondent

Member of Authority: Trish MacKinnon

Representatives: Piers Hunt, Counsel for Applicant
Gary Tayler, Counsel for Respondent

Submissions Received: 9 July 2013 from Applicant
1 and 9 July 2013 from Respondent

Date of Determination: 15 July 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination of the substantive issue dated 14 May 2013, I found that Mr Gillett-Jackson's personal grievance failed and he had not been constructively dismissed. I also found there to be no breach of good faith by his employer as he had alleged. Costs were reserved.

[2] Sinclair Pryor Motors Limited (Sinclair Pryor) notes that it was wholly successful in resisting Mr Gillett-Jackson's claims and accordingly seeks costs. It considers an award of \$3,500 to be appropriate in accordance with the Authority's established daily tariff. Its full costs were \$4,500 plus goods and services tax.

[3] Submissions by Mr Hunt on behalf of Mr Gillett-Jackson ask the Authority to take a number of factors into account in exercising its discretion over costs. These include Mr Gillett-Jackson's young age and the fact that this was his first employment as an apprentice on a low hourly rate of pay.

[4] Mr Hunt submits that the withholding of pay increases from Mr Gillett-Jackson during his employment led him to feel disadvantaged in his employment. His employer's failure, as he saw it, to award him pay increases as he attained credits during his apprenticeship caused him distress and hardship. It was also submitted that any award of costs would cause undue hardship to a young man who had only recently completed his apprenticeship. Mr Hunt invited the Authority to adopt the view that this was a case where the costs should fall where they lay.

[5] Mr Tayler, advocate for Sinclair Pryor, rejects the submission that an award of costs would cause undue hardship to the applicant, noting that no factual detail had been provided of Mr Gillett-Jackson's current financial circumstances. It was approximately 12 months since the termination of his employment from Sinclair Pryor, and he had given evidence in the investigation meeting of commencing fulltime employment in October 2012.

[6] Mr Tayler submitted that Mr Gillett-Jackson went into this case with his eyes open, being prepared to incur his own legal costs and knowing that, if unsuccessful, his former employer would claim costs against him, as it had flagged in its amended statement in reply.

[7] Advocates for both Mr Gillett-Jackson and Sinclair Pryor referred me to the principles established for the award of costs in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*¹.

Discussion

[8] Costs are discretionary and it is up to the Authority to decide whether they should be awarded and, if so, in what amount. Costs normally follow the event and I find it appropriate that they should do so in this instance. Mr Gillett-Jackson was paid at all times in accordance with the provisions of his employment agreement. Pay increases on completion of the various stages of his apprenticeship were at the discretion of his employer. The evidence suggested that discretion had been applied fairly.

[9] Mr Gillett-Jackson resigned when his employer offered a pay rise that represented less of an increase than he had decided he was worth on completion of his

¹ [2005] ERNZ 808 (EmpC)

apprenticeship. He failed comprehensively in his claims against Sinclair Pryor, and it is only reasonable that he should contribute towards the costs his former employer incurred in defending his claims.

[10] The investigation meeting lasted half a day and I accept Mr Hunt's submission that the starting point for the determination of costs should be half the notional daily tariff. Applying the principles in *Da Cruz*, and taking into consideration the submissions of the parties, I consider an award of \$1,750 to be appropriate.

Determination

[11] Mr Gillett-Jackson is ordered to pay Sinclair Pryor the sum of \$1,750 in costs.

Trish MacKinnon
Member of the Employment Relations Authority