

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2023] NZERA 73
3143302

BETWEEN MATHEW GOULSTONE
Applicant

AND No 1 BLINDS LIMITED
Respondent

Member of Authority: Eleanor Robinson

Representatives: Kirsten Westwood, advocate for the Applicant
Suzanne Eagles representing the Respondent

Submissions received: 27 January 2023 from Applicant
10 February 2023 from Respondent

Determination: 16 February 2023

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 14 November 2022 ([2022] NZERA 590), the Authority found that the Applicant, Mr Mathew Goulstone, had not been unjustifiably dismissed by the Respondent, No 1 Blinds Limited (No 1 Blinds), but that he had been unjustifiably disadvantaged in regard to his suspension on 11 December 2020.

[2] Both parties therefore had a degree of success in the matter.

[3] In the substantive determination costs were reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately, they have been unable to do so, and both parties have filed submissions in respect of costs.

[4] The matter involved a half of meeting time. Ms Westwood, on behalf of Mr Goulstone, is seeking a contribution to costs of \$1,250.00.

[5] Ms Eagles, on behalf of No 1 Blinds does not consider that Mr Goulstone should be awarded any costs, but in the event that the Authority considers the application, submits that No 1 Blinds should receive an award of \$45,000 in respect of lost production and \$8,500.00 in respect of for management time relating to that issue, a total of \$53,500.00.

Principles

[6] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 which states:

15 Power to award costs

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[7] Costs are at the discretion of the Authority¹. The principles and the approach adopted by the Authority on which an award of costs are made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz (Da Cruz)*².

[8] It is a principle set out in *Da Cruz* that costs are not to be used as a punishment. It is also a principle that costs are discretionary and awards made are consistent with the Authority's equity and good conscience jurisdiction.

Costs

[9] In determination ([2022] NZERA 590) Mr Goulstone was the successful party in regard to his unjustifiable disadvantage claim, but No 1 Blinds was the successful party in respect of the unjustifiable dismissal claim.

[10] This was a half day investigation, so the starting point for costs assessed at the notional daily tariff in the Authority is \$2,250.00. Both parties have, as observed, had some degree of success, although the Respondent was successful in defending the major claim of unjustifiable dismissal.

[11] In *Coomer v J A McCallum and Son Ltd* the Employment Court observed that in these cases of mixed success, the Authority must: "stand back and look at things in the round".³ It is

¹ *NZ Automobile Association Inc v McKay* [1996] 2 ERNZ 622

² *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808

³ *Coomer v JA McCallum and Son Ltd* [2017] NZEmpC 156 at [43]

also important to note that Mr Goulstone's, albeit limited, success could not have been achieved without filing a case in the Authority.

[12] Standing back and considering the matter in the round, I have had regard to the following in reaching a costs decision in this matter:

- i. principles set out in *Da Cruz*;
- ii. the partial nature of Mr Goulstone's success;
- iii. the success on the major unjustifiable dismissal claim by the Respondent; and
- iv. the time taken for the Investigation Meeting and the delay at the start of the Investigation Meeting occasioned by the Respondent's behaviour;

[13] On the basis that the Employment Court has stated that mixed success is nevertheless success for the purposes of awarding costs, I consider that Mr Goulstone should receive a costs award. However I consider that in the circumstances of this case, that should be at a minimal level only.

[14] **I order No 1 Blinds to pay to Mr Goulstone the sum of \$600.00 as a contribution to his actual costs pursuant to clause 15 of Schedule 2 of the Act.**

Filing Fee

[15] **I order No 1 Blinds to pay Mr Goulstone the filing fee of \$71.56 ,**

Eleanor Robinson
Member of the Employment Relations Authority