

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2021] NZERA 40
3048372

BETWEEN

MARK GUEST
Applicant

A N D

MICHAEL LE ROY
Respondent

Member of Authority: David G Beck

Representatives: Christine Gordon, advocate for the Applicant
Michael Le Roy, for the Respondent

Investigation Meeting: On the papers

Submissions Received: 23 November 2020 from the Applicant
None from the Respondent

Date of Determination: 3 February 2021

COST DETERMINATION OF THE AUTHORITY

The Determination

[1] On 9 November 2020 the Authority issued a determination finding that Michael Le Roy employed Mark Guest and that:

- a. Mark Guest was unjustifiably dismissed and disadvantaged by the manner in which his employment with Michael Le Roy was terminated.

- b. Michael Le Roy failed to adhere to good faith obligations in effecting the dismissal.
- c. Michael Le Roy must pay Mark Guest the sums below:
 - (i) \$2,898.00 gross lost wages;
 - (ii) \$7,868 gross unpaid holiday pay;
 - (iii) \$16,200 compensation without deduction pursuant to s 123(1)(c)(i) of the Act.

[2] The parties were asked to explore resolving costs by agreement but failed to do so.

Submission from Mark Guest

[3] Ms Gordon briefly submitted that having successfully obtained an unjustified dismissal ruling her client seeks a contribution to costs of \$5,000 plus GST and the filing fee of \$71.56 that is above the notional daily tariff (\$4,500).

[4] The suggested 'uplift' for a meeting that took one day was made on the basis that following the investigation meeting further submissions had to be prepared on the identity of the employer.

[5] No submission was received from Mr Le Roy.

Costs principles

[6] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000. The discretion it is accepted is guided by principles set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*¹ including: that costs are not to be used as a punishment or as a reflection on how either party conducted proceedings and that awards are to be made consistent with the equity and good conscience jurisdiction of the Authority.²

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

² Section 160(2) Employment Relations Act 2000.

Assessment

[7] However, a general principle for a successful party is that costs should 'follow the event' and here Mr Guest was wholly successful in his unjustified dismissal and disadvantage claims.

[8] In these circumstances, I do not consider that an uplifted daily tariff should apply as the submissions Ms Gordon referred to were essential to the normal preparation of Mr Guest's case.

Award

[9] I order Michael Le Roy to pay Mark Guest the sum of \$4,500 as a contribution to his legal costs incurred and to pay the filing fee of \$71.56.

David G Beck
Member of the Employment Relations Authority