

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 95B/08
5085465

BETWEEN VERRYN HEAP
 Applicant

AND CALIBRE PLASTICS
 LIMITED
 Respondent

Member of Authority: Robin Arthur

Representatives: Barbara Buckett, Counsel for Applicant
 David Flaws, Advocate for Respondent

Submissions received: 19 September 2008 from Applicant
 24 September 2008 from Respondent

Determination: 25 September 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination WA 95/08 (14 July 2008) Calibre Plastics Limited was found to have unjustifiably dismissed Verryn Heap because of the way in which it went about making her position redundant. Calibre was ordered to pay Ms Heap \$6000 as compensation for the hurt and humiliation caused by its actions and, under determination WA 95A/08 (11 August 2008), a further two-and-a-half weeks salary that she was entitled to as redundancy compensation under her former employment agreement.

[2] Ms Heap now seeks an award of costs as the parties have been unable to resolve that matter between themselves.

[3] She has incurred legal fees in excess of \$31,000 (plus GST) in this matter and disbursements of \$222 (plus GST), including lodgement and hearing fees. She seeks an award of costs at the rate of \$7500 a day for two-and-a-half days. This includes a

half-day added because the first scheduled investigation meeting was adjourned shortly after starting due to the failure of Calibre to provide all relevant documents beforehand. She says this daily rate is warranted because Calibre obstructed prompt, prior mediation.

[4] For Calibre, Mr Flaws submits that a daily tariff of \$500 would be appropriate. He also says that Calibre is “*no longer trading*” and “*in liquidation*”. He has no further instructions and has now ceased to represent Calibre.

[5] Neither Calibre Plastics Limited – nor an associated company with the same directors and shareholders, Calibre Solutions Limited – are identified on the Companies Office register, as accessed by the internet, as being in liquidation as of the time of issuing this determination – that is at 2.30pm on 25 September 2008.

Determination

[6] Costs in this case may be determined under the principles outlined in *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808 and using a tariff-based approach applied flexibly to the particular circumstances of the case.

[7] For a case of this type, involving a hearing over two days with evidence from Ms Heap and two witness for Calibre followed by oral closing arguments, I take \$2500 as the starting point for the notional daily rate.

[8] There are no factors which persuade me to adjust that rate up or down.

[9] I do not accept that the rate should be adjusted on a mere allegation that Calibre improperly delayed arrangements for mediation.

[10] Neither do I accept that all Ms Heap’s legal fees – at a level in excess of \$31,000 for a relatively straight-forward matter – could be accepted as reasonably incurred for the purposes of assessing costs in this Authority.

[11] An additional half-day is allowed in the period to which the daily tariff applies. That provides a contribution to additional costs incurred by the adjournment required after Calibre has failed to provide all relevant documents in advance.

[12] The total time to which the notional daily rate of \$2500 applies is two-and-a-half days.

[13] On that basis, I award \$6250 as a modest and reasonable contribution to the legal costs incurred by Ms Heap and a further \$222 to meet disbursements.

[14] I note that the combined value of remedies and costs awarded is less the total of legal fees said to have been incurred. That is unfortunate but, as noted by the Court in the *Da Cruz* case, at [47], representatives need to be conscious of the potential effect of accumulating costs on the value of remedies eventually awarded, and advise clients accordingly.

[15] Calibre is to pay the total sum of costs and disbursements awarded to Ms Heap within 28 days of the date of this determination.

Robin Arthur
Member of the Employment Relations Authority