

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

[2013] NZERA Christchurch 112
5372967

BETWEEN JAMIE GWEN HAMMOND
 Applicant

AND POLLADIO HOLDINGS
 LIMITED
 Respondent

Member of Authority: David Appleton

Representatives: John Black, Counsel for Applicant
 Alyn Higgins, Counsel for Respondent

Submissions received: 31 May 2013 from the Applicant
 10 June 2013 from the respondent

Determination: 18 June 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] By way of a determination dated 26 February 2013, the Authority determined that the applicant had been unjustifiably dismissed, and was awarded remedies. Costs were reserved in that determination and the parties were invited to agree between themselves how costs were to be disposed of. The parties have been unable to agree as to costs, and so have invited the Authority to determine that issue.

[2] The applicant seeks a full contribution to her costs, which amount to \$8,774.50 including GST. Her counsel argues that this is justified on the basis that, had the respondent conducted itself properly and fairly, the matter would have settled at a much earlier date with little or no legal costs being incurred. The applicant also refers to the respondent saying that it is not able to pay the remedies ordered in full, and that it is paying them off at monthly instalments.

[3] Whilst the respondent accepts that costs follow the event, and that they should do so in this case, it resists a full contribution. It points out that it did nothing to significantly prolong the duration of the investigation, and did not indulge in

unreasonable conduct or delay. In addition, it did not receive a Calderbank offer from the applicant that may justify the award of costs on an indemnity basis. From the perspective of the Authority, it cannot object to these points. Whilst the respondent did lose its argument that it had justifiably dismissed Ms Hammond, it was entitled to defend the personal grievance and the allegations of unjustified dismissal given that it had followed a disciplinary process prior to the dismissal.

[4] The fact that the parties have agreed that the remedies be paid by instalments, even if the applicant agreed reluctantly, is not a factor that should be reflected in costs.

[5] The Authority must follow the principles of *PBO Ltd v Da Cruz*, [2005] 1 ERNZ 808, which include the following:

- a. There is a discretion as to whether costs would be awarded and what amount.
- b. The discretion is to be exercised in accordance with principle and not arbitrarily.
- c. The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority.
- d. Equity and good conscience are to be considered on a case by case basis.
- e. Costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.
- f. It is open to the Authority to consider whether all or any of the parties' costs were unnecessary or unreasonable.
- g. That costs generally follow the event.
- h. That without prejudice offers can be taken into account.
- i. That awards will be modest.

- j. That frequently costs are judged against a notional daily rate.
- k. The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[6] This is a case that was straightforward and which did not appear to depart from the normal standard case in terms of how it was contested between the parties. Therefore, I believe that the costs award should be modest, and should not seek to punish the respondent.

[7] I appreciate that counsel for the applicant has disclosed his full timesheets showing a precise breakdown of the work carried out over time. This is a rare occurrence in the Authority, and I thank him for doing so, as it is helpful in enabling me to assess the reasonableness of the costs incurred. On the basis of what has been disclosed, I see nothing that obviously shows unreasonableness, as a number of activities appear to have been undertaken.

[8] However, adopting the *Da Cruz* principles, I do not believe that the Authority would be justified in adopting an approach other than awarding the standard notional daily rate. The investigation meeting took a total of around four hours, comprising an investigation meeting in Timaru lasting three hours and evidence being taken over the telephone on two further occasions, each of which lasted no more than 30 minutes. Submissions were made in writing.

[9] The notional daily rate in the Authority has been \$3,500 for the last year or so and that is the rate that I believe should be adopted in this case. As the investigation meeting took four hours in total, and given that, if submissions had been given orally, the total length of the investigation would have been between five to six hours, I believe that it is appropriate to treat the investigation meeting as having lasted one day.

[10] I therefore conclude that the respondent should contribute \$3,500 to the applicant's legal costs.

Order

[11] The respondent is ordered to pay the sum of \$3,500 as a contribution towards the applicant's costs.

David Appleton

Member of the Employment Relations Authority