

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2020] NZERA 174
3062032

BETWEEN JARED HAYDON-GLIDDON
Applicant

AND GAMESON SHAREMILKING
PARTNERSHIP
Respondent

Member of Authority: Helen Doyle

Representatives: Phillip de Wattignar, advocate for the Applicant
Wayne Todd, counsel for the Respondent

Submissions Received: 8 April 2020 from the Applicant
22 April 2020 from the Respondent

Date of Determination: 30 April 2020

COSTS DETERMINATION OF THE AUTHORITY

A Gameson Sharemilking Partnership is ordered to pay to Jared Haydon-Gliddon costs in the sum of \$2,250 together with reimbursement of the filing fee of \$71.56.

Substantive determination

[1] In its determination dated 26 March 2020 the Authority found that the applicant was unjustifiably dismissed and reserved the issue of costs.

[2] Costs submissions have now been received from the applicant and respondent.

Applicant's submissions

[3] Mr de Wattignar, on behalf of the applicant, submits that costs should follow the event.

[4] He seeks a contribution towards costs in the sum of \$4,500 for the investigation meeting held in Dunedin on 4 February 2020 together with reimbursement of the filing fee of \$71.56.¹

Respondent's submissions

[5] Mr Todd, on behalf of the respondent, acknowledges the power of the Authority to award costs as set out in clause 15 of Schedule 2 to the Employment Relations Act 2000.

[6] He refers in his submissions to two of the principles that should guide the Authority in the exercise of its discretion as to costs with reference to the judgment of the full Court of the Employment Court in *PBO Limited (formerly Rush Security Limited v da Cruz*. The first that a tariff based approach is appropriate as long as it is not applied in a rigid manner, and the second being the principle of proportionality.²

[7] Mr Todd submits that the Authority should take into account that the investigation meeting occupied about one half day together with the principle of proportionality and the overall lack of complexity. He refers to the lack of invoices to confirm overall costs incurred.

[8] Further, he submits that a part of the applicant's claim was, by agreement, not pursued and that the respondent agreed that one applicant witness did not need to be called. This assisted in the conduct of the investigation meeting which concluded about midday.

[9] He submits that the starting point should be half of the notional daily rate being \$2,250 from which deductions should be made for the reasons set out above. Mr Todd submits a fair, reasonable and proportionate award would be the sum of \$1000.

¹ Practice Note 2 from the Chief of the Employment Relations Authority, 30 June 2016.

² *PBO v da Cruz* [2005] ERNZ 808 at [46] and [47].

Analysis and conclusions

[10] A fundamental principle in the exercise of the discretion as to costs is that costs follow the event. There is no good reason in this case to depart from that principle. The applicant was the successful party and is entitled to consideration of a contribution towards his costs.

[11] The meeting did not take a full day. This should be reflected in any award. The investigation meeting commenced at 9.30am and concluded, according to my minute book, at 12.50pm.

[12] I find that a suitable starting point for an assessment of costs is the sum of \$2,250 which is half of the notional daily tariff. I have then considered whether there should be an increase or reduction to that amount.

[13] I agree with Mr Todd that the matter was not at the higher end of complexity however remedies did have an element of complexity and the facts were unusual. Complexity on balance is a neutral factor and does not call for an increase or a decrease to the starting point of an assessment of costs.

[14] Both representatives were co-operative at the investigation meeting and by agreement a reluctant witness was not required for questioning. Mr de Wattignar also handed up his final submissions without talking to them. These matters resulted in a very streamlined investigation. That is supported by the reduced time required for investigation and that in turn is reflected in the starting point of half the daily tariff. No further increase or reduction to the notional daily tariff is required.

[15] The reference by the Employment Court to proportionality in *PBO v da Cruz* was to emphasise the need for an economic approach for cases in the employment area to ensure that costs are reasonable weighing what is likely to be recovered by way of remedy.³ In *PBO* the award in favour of the plaintiff and costs ordered in the Authority left a considerable amount owing to the plaintiff representative. The costs were increased by the Employment Court.⁴

[16] In line with his proportionality submission Mr Todd places some weight on the award for compensation being above the average awards made by the Authority for a six month

³ Above n2 at [47]

⁴ Above n 2

period to December 2019. There has been an increase in the level of compensatory awards in recent years and this is supported by a number of Employment Court judgments. I am not persuaded that amounts awarded to a successful party on their own impact on the level of costs assessed on the basis of the notional daily tariff. I make no reduction to the tariff on that basis.

[17] There are no invoices attached to Mr de Wattignar's submissions. The amount claimed is limited to the notional daily tariff. Assessed against the work the Authority is aware of from the file, including a telephone conference and the investigation meeting, the failure to provide invoices is not an impediment in this case to proceeding to consider an award. There is no doubt costs were incurred at least to the starting point the Authority has arrived at.

[18] In conclusion I find that a fair and reasonable award of cost in this matter is the sum of \$2,250 together with reimbursement of the filing fee of \$71.56.

Order

[19] I order that Gameson Sharemilking Partnership pay costs to Jared Haydon-Gliddon in the sum of \$2,250 together with reimbursement of the filing fee it he sum of \$71.56.

Helen Doyle
Member of the Employment Relations Authority