

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 370
5499263

BETWEEN

MIN HE
Applicant

AND

KERIS ENTERPRISES
LIMITED
Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Yumi Fu, for the Applicant
Ray Parmenter, Counsel for the Respondent

Submissions received: 6 November 2015 from the Respondent
18 November 2015 from the Applicant

Determination: 26 November 2015

COSTS DETERMINATION OF THE AUTHORITY

The applicant, Ms Min He is ordered to contribute \$3,000 towards the respondent's, Keris Enterprises Limited's costs.

Employment Relationship Problem

[1] In an oral determination on 5 November 2015 and recorded in writing on 9 November 2015¹, the Authority determined that the applicant, Ms Min He had not been successful in her claims of alleged unjustified disadvantage and dismissal against Keris Enterprises Limited (Keris).

[2] In the substantive determination, costs were reserved. The parties were invited to file memoranda as to costs within a specified time frame. Submissions in respect of costs with supporting invoices have been filed by Keris but not by Ms He. Ms He simply sent an email to the Authority claiming the Authority's determination was

¹ [2015] NZERA Auckland 347

unfair, that the lawyer's fees should not apply to her, the result was because the respondent was late for the meeting and that she had incurred a parking fine.

[3] Mr Parmenter for Keris seeks an award of \$3500 in costs in accordance with the daily tariff normally applied by the Authority in respect of the costs of a successful party. Mr Parmenter provided invoices which demonstrate the actual costs incurred by Keris amounted to almost \$7000, approximately double the daily tariff.

[4] The principles applicable to awards of costs in the Authority are well established. The general principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*² ("*Da Cruz*") is that costs follow the event, and I see no reason to depart from that in this case. Keris was entirely successful in its defence of Ms He's claims and should be awarded costs.

[5] The Employment Court in *Carter Holt Harvey v. Eastern Days Independent Industrial Workers Union & Ors*³ observed that a notional daily tariff approach, which was to be adjusted in a principled way, was best suited to the Authority's unique jurisdiction. This approach has been affirmed by the Employment Court recently in *Fagotti v. Acme & Co Ltd*⁴. I adopt that approach.

[6] The investigation meeting lasted almost one full day. For a one day investigation meeting the notional daily rate amounts to an award of \$3,500.00.

[7] Ms He produced no evidence regarding her costs or her financial circumstances to assist the Authority. Ms He did not file any submissions in response to Keris' memorandum as to costs. Ms He sent an email as described above which was not helpful in assisting the Authority in deciding costs.

[8] The meeting did commence one hour late on 5 November 2015. This was because the investigation meeting had been rescheduled on a number of occasions by both parties. Mr Parmenter for Keris was not aware the meeting had been rescheduled to proceed on 5 November 2015. Because of this misunderstanding the meeting commenced at 11 am rather than at 10 am.

[9] Weighing all the considerations referred to in *Da Cruz* in the discretionary exercise of awarding costs, I consider that there should be a slight adjustment to the

² [2005] 1 ERNZ 808

³ [2011] NZEmpC 13

⁴ [2015] NZEmpC 135

notional daily rate to reflect the fact that the investigation meeting was delayed for one hour through no fault of Ms He and did not occupy a full one day. In the circumstances, a reduction of \$500 to the daily notional rate is appropriate. Accordingly, Ms He is ordered to pay Keris a total of \$3,000 as a contribution to its costs.

[10] An arrangement may need to be made for Ms He to pay the costs by way of instalments over several months. Leave is reserved for the parties to revert to the Authority for future orders if such arrangements are sought and cannot be agreed.

Anna Fitzgibbon
Member of the Employment Relations Authority