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Hills v Jay & Bee (2006) Limited (Wellington) [2016] NZERA 413; [2016] NZERA Wellington 110 (5 September 2016)

Last Updated: 1 December 2016

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2016] NZERA Wellington 110
5575463

BETWEEN JULIE HILLS Applicant

AND JAY & BEE (2006) LIMITED Respondent

Member of Authority: M B Loftus

Representatives: Jenny Murphy, Advocate for Applicant

Glenn Warren for Respondent

Submissions Received: 11 July and 22 August 2016 from Applicant

10 August 2016 from Respondent

Determination: 5 September 2016

COSTS DETERMINATION OF THE AUTHORITY

[1] On 29 April 2016 I issued a determination¹ concluding Ms Hills had a personal grievance in that she had been unjustifiably dismissed by Jay & Bee (2006) Limited (Jay & Bee). There was also a conclusion Ms Hills had money improperly deducted from her wages and repayment was ordered.

[2] Costs were reserved and Ms Hills, as the successful party, now seeks a contribution toward those she incurred in pursuing her claims.

[3] Normally the Authority will use a daily tariff approach when addressing a costs claim.² The normal starting point is \$3,500 per day and from there adjustment may be made depending on the circumstances.

[4] The investigation took about two thirds of a day which would, applying the above tariff, see a contribution in the order of \$2,200. Ms Hills, however, seeks a

greater sum - \$3,500 plus reimbursement of her filing fee (\$71.56).

¹ [2016] NZERA Wellington 51

² refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] NZEmpC 144; [2005] ERNZ 808

[5] In support of her claim Ms Hills refers to her actual costs; a calderbank offer she sent soon after the dismissal; Jay & Bee impeding preparation by not providing wage and time records when these were requested and the fact it agreed an amount it would pay as a contribution toward costs but reneged, thus putting Ms Hills to the cost of this application.

[6] Here I note Ms Hills actual costs exceed the *tariff* by a significant sum; the calderbank was proffered in a timely manner with the amount sought being a little less than Ms Hills attained via the determination and the work generated by the failure

to provide time and wage records is explained and the cost quantified.

[7] Only the final line of Jay & Bee's response, quoted later in this paragraph, addresses the question of costs. Instead Jay & Bee reiterates allegations of misconduct levelled at Ms Hills during the substantive investigation before saying she *should take responsibility for her actions and be responsible for the full lawyer costs incurred*.

[8] All I can say is those allegations were found wanting in the substantive determination. Jay & Bee chose not to challenge those conclusions and must now live with the consequences. In other words its response is worthless.

[9] Having considered the submissions and supporting documentation I conclude there is merit in Ms Hills request I award an amount which exceeds the daily tariff. To that I add the fact the amount sought must, in the circumstances, be considered reasonable. Parties should not be discouraged from being reasonable in a costs setting and in the absence of a contrary argument I consider this a situation in which Ms Hills request should be met in full.

[10] For the above reasons Jay & Bee (2006) Limited is ordered to pay Julie Hills the sum of \$3,571.56 (three thousand, five hundred and seventy one dollars and fifty six cents) as a contribution toward the costs she incurred in pursuing her claim.

M B Loftus

Member of the Employment Relations Authority

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