

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2014] NZERA Christchurch 190  
5425774

BETWEEN	TONY HOGEBOOM First Applicant
	VICKI RAUMAWEA Second Applicant
A N D	KERSHEVIN FARMS LIMITED Respondent

Member of Authority: M B Loftus

Representatives: Anna Oberndorfer, Advocate for Applicants  
David Beck, Counsel for Respondent

Submissions Received: 30 October 2014 from Applicants  
24 November 2014 from Respondent

Date of Determination: 26 November 2014

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] On 28 August 2014 I issued a determination concluding the applicants each had a personal grievance in that both were unjustifiably dismissed. Costs were reserved.

[2] Further claims (penalty, outstanding wages and reimbursement for the purchase of wet weather clothing) were dismissed, as was a counterclaim from Kershevin Farms Limited (Kershevin).

[3] On 30 October the applicants filed an application for a contribution toward the costs they incurred. These totalled \$8,577.56 and toward that they seek a contribution of \$6,670.00 plus reimbursement of the Authority's filing fee.

[4] On 24 November 2014 Mr Beck advised there would be no submission in reply.

[5] Normally the Authority will use a daily tariff approach when addressing a costs claim (refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808). The normal starting point is \$3,500 per day and from there adjustment may be made depending on the circumstances.

[6] The applicants seek an increase to the tariff. In support of that they argue their costs were increased as a result of Kershevin's reluctance to provide information and/or meaningfully participate in attempts to resolve the claims. They say delays were experienced at each step of the process and they were costly in terms of both time and money.

[7] The respondent's failure to provide a substantive response means these allegations are not contested.

[8] A perusal of both the submission and the attached invoice does however show the total includes costs associated to mediation. Those are not reimbursable and should be deducted.

[9] As is recognised in Ms Oberndorfer's submission (paragraph [10]) the residue and the amount sought as a contribution are not dissimilar. In other words the applicants effectively seek something approaching indemnity costs.

[10] A costs award is a contribution and not full indemnification except in exceptional circumstances and where the type of behaviours discussed in *Bradbury v Westpac Banking Corporation* [2009] 3 NZLR 400 are present. While there is evidence the applicants' claims regarding Kershevin's behaviour have substance, there is nothing that indicates their behaviour is of the type contemplated in *Bradbury*.

[11] I conclude Kershevin's behaviour increased the applicants' costs. Its filing of a counterclaim which it failed to support with evidence certainly did as a defence still had to be prepared. Similarly unfulfilled promises concerning attendance at the investigation incurred a delay which cost the applicants. That should be recognised in an increase to the tariff but not to the extent sought.

[12] Having considered the submissions I conclude \$5,000 to be appropriate. To that I add the filing fee (\$71.56) – a given disbursement.

[13] For the foregoing reasons, I order Kershevin Farms Limited pay the applicants the sum of \$5,071.56 (five thousand and seventy one dollars and fifty six cents) as a contribution toward the costs the applicants incurred in pursuing their claims.

M B Loftus  
Member of the Employment Relations Authority