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Hollinshead v Davey (Auckland) [2018] NZERA 186; [2018] NZERA Auckland 186 (12 June 2018)

Last Updated: 4 July 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2018] NZERA Auckland 186
3013453

BETWEEN DENISE HOLLINSHEAD Applicant

AND JOHN DAVEY First Respondent

AND CNR INVESTMENTS LIMITED

Second Respondent

Member of Authority: Vicki Campbell

Representatives: David Hayes for Applicant

Andrea Twaddle for Respondents

Submissions received: 24 May and 8 June 2018 from Applicant

8 June from Respondents

Determination: 12 June 2018

COSTS DETERMINATION OF THE AUTHORITY

A. Mr Davey and CNR Investments Limited are jointly and severally liable to pay a contribution to Ms Hollinshead's costs of

\$3,071.56 within 28 days of the date of this determination.

[1] In a determination dated 14 May 2018¹ I found Mr Davey personally was Ms Hollinshead's employer, that she was unjustifiably dismissed and that Mr Davey had breached [s 63A](#) of the [Employment Relations Act 2000](#) and s 81 of the Holidays Act

2003. I ordered compensation to be paid to Ms Hollinshead and imposed a penalty on

Mr Davey for the breaches which he was also ordered to pay to Ms Hollinshead.

¹ [2018] NZERA Auckland 159.

[2] I reserved costs, indicating that if the parties were unable to resolve costs, both parties would have the opportunity to file cost memoranda and evidence. The parties have been unable to resolve the matter.

[3] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. Under normal circumstances the Authority would apply a starting point of a notional daily tariff for

quantifying costs.

[4] The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks reasonable.² The principles applying to costs are well settled and do not require repeating.³

[5] An assessment of costs will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.⁴

[6] The investigation meeting took less than one day and was slightly longer than half a day. Ms Hollinshead has asked me to uplift the daily tariff to take into account additional time spent on deciphering inadequate wage and time records and additional costs associated with defending a strike out application which would not usually be part of a proceeding.

[7] Ms Hollinshead incurred actual legal costs totalling 10,868 including GST for attendances for the Authority's investigation. I am satisfied the costs were reasonably incurred.

[8] Mr Davey has asked the Authority to let costs lie where they fall. Given Ms Hollinshead's success it is not appropriate to let costs lie where they fall.

[9] I am not satisfied the daily tariff should be increased. The arrears of wages claim was settled prior to the investigation meeting and the issue of strike out was

dealt with at the same time as the substantive issues.

² [Employment Relations Act 2000](#), Schedule 2, clause 15.

³ *PBO Ltd v Da Cruz* [2005] NZEmpC 144; [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

⁴ Practice Note 2, Costs in the Employment Relations Authority.

[10] In all the circumstances I consider an appropriate contribution to Ms Hollinshead's costs to be \$3,000. Ms Hollinshead is also entitled to be reimbursed the filing fee of \$71.56.

[11] Further, I am of the view that Ms Hollinshead's application for the costs to be ordered against Mr Davey and CNR Investments Limited jointly and severally is appropriate. The original application was against Mr Davey only. It was at the insistence of CNR Investments Limited that it was joined as a respondent which then required an investigation into the identity of the correct employer.

[12] CNR says it is no longer a trading entity. I have noted that it continues to be registered on the Companies Register but action is being taken to remove it for its failure to file an annual return.

[13] Mr Davey and CNR Investments Limited are jointly and severally liable to pay a contribution to Ms Hollinshead's costs of \$3,071.56 within 28 days of the date of this determination.

Vicki Campbell

Member of the Employment Relations Authority

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