

NOTE: This determination contains an order prohibiting publication of certain information

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2023] NZERA 636
3154901

BETWEEN	JXC Applicant
AND	VGM First Respondent
	XOZ Second Respondent

Member of Authority:	Helen Doyle
Representatives:	Maria Dew KC and Daniel Joseph, counsel for the Applicant Simon Greening and Andrea De Stadler, counsel for the First and Second Respondents
Investigation Meeting:	On the papers
Submissions Received:	9 October 2023 from the Applicant No submissions received from the Respondent
Date of Determination:	30 October 2023

COSTS DETERMINATION OF THE AUTHORITY

Substantive determination

[1] The Authority found in its determination dated 26 September 2023 that JXC had been sexually harassed in her employment and unjustifiably dismissed.¹ Costs were reserved and a timetable set for an exchange of submissions.

¹ *JXC v VGM and XOZ* [2023] NZERA 554.

[2] The Authority has received submissions lodged on behalf of JXC. No submissions were received on behalf of VGM and XOZ. The Authority proceeds to determine the issue of costs.

Non-Publication orders

[3] The interim non-publication orders made in the substantive determination for JXC, VGM and XOZ continue for the purposes of this determination until further order of the Authority or Employment Court. The non-publication orders relate to names, health information, identifying particulars, content of pleadings and statements of evidence lodged including the closed bundle of documents.

Submission on behalf of JXC

[4] JXC was substantially successful in her claims.

[5] The first investigation meeting was held over three days on 7, 8 and 12 July 2022. The investigation meeting was at that stage concluded except for the need to hear from two remaining witnesses who were to be called on behalf of VGM and/or XOZ.

[6] A second investigation was set down for 25 and 26 July 2023 to enable evidence to be reheard in order to determine the matter.

[7] The tariff costs for the investigation meeting based on \$4,500 for the first day hearing and \$3,500 for subsequent days are \$19,500. JXC has incurred legal aid costs of \$10,458.73 which includes GST where applicable and has recently applied for post-hearing matters for further funding of \$479.55. It is anticipated total legal aid costs incurred by JXC are likely to be \$10,938.28.

[8] In this case, the tariff costs exceed the legal aid costs and disbursements. JXC has been legally aided throughout the proceedings and therefore is limited to actual costs spent on legal aid plus any actual disbursements incurred not covered by legal aid.

[9] JXC does not reside in Auckland and incurred flights and accommodation costs of not less than \$1,000 which she seeks to recover, as these are not covered by legal aid.

[10] A cost award in the sum of \$10,938.28 is sought together with additional travel and accommodation costs of \$1,000.

Conclusions

[11] In determining the issue of costs regard has been had to the principles in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* which have been confirmed by the Employment Court in *Fogotti v Acme & Co Ltd*.²

[12] JXC was the successful party and is entitled to consideration of costs.

[13] The costs claimed are less than those assessed on the basis of the daily tariff.

[14] Considering the matter in the round with the usual principles that apply to costs in the Authority I conclude an award for costs that is both fair and reasonable is the sum of \$10,938.28.

Disbursements

[15] JXC seeks costs incurred with travel and accommodation in the sum of at least \$1,000 as she resides outside of Auckland. The claim is not supported by documentation and receipts however the Authority is aware of JXC incurring the costs of flights and needing accommodation for the last two days of investigation.

[16] It is unusual for travel costs for parties to be awarded as disbursements but these have been awarded in appropriate cases.³ This matter does have some exceptional elements. I conclude it appropriate to award by way of disbursements half of the claim for travel costs and accommodation in the sum of \$500.

Who is liable for costs?

[17] There were no orders made against XOZ so costs and disbursements are to be ordered payable by VGM.

² *PBO Ltd (formerly Rush Security Limited) v Da Cruz* [20056 ERNZ 808; *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135.

³ *Crush v Southern District Health Board* [2017] NZERA Christchurch 176.

Orders made

[18] VGM is ordered to pay to JXC costs in the sum of \$10,938.28 together with disbursements in the sum of \$500.

Helen Doyle
Member of the Employment Relations Authority