

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2023] NZERA 307  
3154023

BETWEEN                      PHILIPPA JOHNSON  
   Applicant  
  
AND                                CERVIN MEDIA LIMITED  
   Respondent

Member of Authority:        Nicola Craig  
  
Representatives:              No appearance for the Applicant  
   Margaret Robins, counsel for the Respondent  
  
Submissions Received:        Nothing received from the Applicant  
   12 May 2023 from the Respondent  
  
Date of Determination:        14 June 2023

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**DETERMINATION OF THE AUTHORITY**

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**Costs sought after Authority determination**

[1] A determination was issued finding that Philippa (Pippa) Johnson had not established that she was disadvantaged by any unjustified action of her employer Cervin Media Limited (Cervin Media) or was constructively dismissed by it.<sup>1</sup>

[2] The parties were invited to resolve any question of costs between themselves. Cervin Media applied for costs. The determination is dated 26 April 2023, with a party seeking costs given 14 days after that date to do so. The application for costs from Cervin Media was received the morning following a full business day after that time, with an explanation provided. The Authority took that as an application for leave to seek costs outside the time set.

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<sup>1</sup> *Philippa Johnson v Cervin Media Limited* [2023] NZERA 208.

[3] Ms Johnson's views were sought on the leave question and the costs application. The advocate who represented her in the investigation meeting let the Authority know that Ms Johnson wished to progress the matter as a self-represented litigant, so the advocate was withdrawing. Further communications from the Authority were directed to Ms Johnson at her email address provided by the advocate.

### **Leave granted**

[4] Cervin Media's representative indicated that the week after the earlier determination she received instructions to seek costs, prepared submissions and emailed Ms Johnson's representative. The advocate indicated she would seek instructions. No further response was received prior the expiry of the period for lodging costs submissions. After a lack of focus on the dates, Cervin Media's representative realised that having received no response from Ms Johnson's advocate, its submissions needed to be filed. They were received very early on the day in question.

[5] Ms Johnson provided no response on the question of leave.

[6] I was satisfied the time after the due date was very short, a response from the other party awaited, an explanation provided, and no prejudice established. Leave to pursue costs out of time was granted. Ms Johnson's response on costs was then sought but nothing was received.

### **Costs awarded**

[7] The Authority is able to award costs.<sup>2</sup> Its discretion to do so is governed by principles.<sup>3</sup> These include that costs will usually follow the event, with the unsuccessful party required to make a contribution towards the representation costs incurred by the successful party.

[8] The Authority operates a notional daily tariff system.<sup>4</sup> Under that regime the starting point for costs consideration is \$4,500 for the first investigation meeting day, with the

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<sup>2</sup> Employment Relations Act 2000, Schedule 2, clause 15.

<sup>3</sup> *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135.

<sup>4</sup> Employment Relations Authority Practice Note 2 - Costs in the Employment Relations Authority Te Ratonga Ahumana Taimahi, <https://www.era.govt.nz/assets/Uploads/practice-note-2.pdf>.

discretion to increase or decrease that amount depending on the circumstances of the particular case.

[9] Here Cervin Media seeks the tariff rate for the one-day investigation meeting. No submissions on whether or not costs should be awarded or at what rate were received from Ms Johnson.

[10] Cervin Media was successful in defending all of Ms Johnson's claims. The investigation meeting went a full day, finishing a little after the usual end time, with submissions later provided in writing. No reasons are identified for a reduction from the tariff rate.

[11] Philippa Johnson is ordered to pay Cervin Media Limited \$4,500 as a contribution to its costs within 28 days of the date of this determination.

Nicola Craig  
Member of the Employment Relations Authority