

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2023] NZERA 131  
3128474

BETWEEN DALIAN KEREHOMA-  
ULUIAKEPA  
Applicant

AND LD INTERNATIONAL  
TRADING LIMITED  
Respondent

Member of Authority: Alex Leulu

Representatives: Robert Morgan, advocate for the Applicant  
Donny Chen for the Respondent

Submissions received: 11 January 2023 from Applicant  
25 January 2023 from Respondent

Determination: 15 March 2023

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] Dalian Kerehoma-Uluiakepa was successful in her personal grievance claim against LD International Trading Limited (LD) for unjustified dismissal.<sup>1</sup> The Authority reserved the issue of costs to allow the parties the opportunity to resolve the issue themselves.<sup>2</sup>

[2] The parties could not agree on costs and Mrs Kerehoma-Uluilakepa has now sought a determination from the Authority. Formal written submissions were received from Mrs Kerehoma-Uluilakepa. Although the Respondent did not file written submissions, the director of LD, Donnie Chen (Mr Chen) sent an email to the Authority outlining his views on costs. Based on this information, I have decided this matter on the papers.

**Costs Principles**

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<sup>1</sup> *Kerehoma-Uluilakepa v LD International Trading Limited* [2022] NZERA 647 (Member Leon Robinson).

<sup>2</sup> Above n 1, at [42].

[3] Clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) gives the Authority discretion to order any party to pay another party such costs and expenses as the Authority thinks reasonable.

[4] The unsuccessful party will usually have to contribute to the costs of the successful party, as well as meeting their own costs. The daily tariff applied by the Authority sets the starting point from which relevant factors and principles may guide an upward or downward adjustment of the amount of costs awarded. The current tariff for costs is \$4,500 for the first day of any matter.

[5] Relevant principles governing costs in the Authority include consideration of whether the conduct of the parties increased costs unnecessarily, warranting an adjustment up or down, without compromising the Authority's otherwise modest approach to costs.<sup>3</sup>

[6] Costs should not punish a party or express disapproval of an unsuccessful party's conduct.

#### **Should costs be awarded?**

[7] In her submissions, Mrs Kerehoma-Uluilakepa has sought costs based on the application of the tariff reflecting the fact that she was represented by an advocate and that the investigation meeting took half a day. Based on the above factors and considering the tariff for the first day being \$4,500, Mrs Kerehoma-Uluilakepa seeks costs of \$2,300.

[8] On behalf of LD, Mr Chen's email mostly disputes the substantive matters which were decided against LD. Mr Chen briefly refers to LD's position on costs and explains that upon seeking legal advice, LD disagrees with Mrs Kerehoma-Uluilakepa's costs assessment. My understanding of Mr Chen's position is that because the investigation meeting lasted for what he describes as "only a few hours", Mrs Kerehoma-Uluilakepa's assessment of costs is unreasonable. Mr Chen provided no other views to further clarify LD's position on costs.

[9] I have no reason to diverge from the well-established tariff approach and I am of the view that costs should be awarded to Mrs Kerehoma-Uluilakepa. Mrs Kerehoma-

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<sup>3</sup> *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

Uluilakepa's costs assessment is reasonably consistent with the tariff and I accept that \$2,300 is an appropriate starting amount for costs in her favour.

### **Should there be a costs adjustment?**

[10] Mrs Kerehoma-Uluilakepa also claims that attempts were made by her through her representative to contact LD to discuss both costs and an award for distress. These attempts included a request to the Authority to extend the time for when submissions were due to allow the Respondent to seek advice on costs. Apart from Mr Chen indicating to Mrs Kerehoma-Uluilakepa's representative that he was seeking legal advice, no further contact was received from either LD or Mr Chen.

[11] I acknowledge the efforts of Mrs Kerehoma-Uluilakepa and her representative in engaging with LD to try and resolve the matter prior to an Authority determination. However this part of the process to resolve costs would not typically influence how much costs is awarded. There is no reason in this case to provide an uplift to the tariff.

[12] Weighing all the above factors and applying the relevant principles, I order LD to pay Mrs Kerehoma-Uluilakepa within 21 days of the date of this determination, \$2,300 as a contribution to her costs.

### **Can a Compliance order be issued?**

[13] In the event that costs are ordered against LD, Mrs Kerehoma-Uluilakepa also seeks a compliance order to be issued against LD in accordance with sections 137(1)(b) and 137(2) of the Act.

[14] Under section 137(1) of the Act, the Authority has the power to order compliance against a person who has failed to observe or comply with certain requirements as set out under that section of the Act. This includes non-compliance with an order or determination made by the Authority.<sup>4</sup>

[15] LD should be given the opportunity to comply with this costs determination. Given that non-compliance with this determination is required before compliance can be issued, I

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<sup>4</sup> Section 137(1)(b) of the Employment Relations Act 2000.

decline Mrs Kerehoma-Uluilakepa's request for a compliance order. In the event that LD fails to pay any outstanding amounts associated with this matter, the opportunity to seek compliance against LD will be available to Mrs Kerehoma-Uluilakepa.

Alex Leulu  
Member of the Employment Relations Authority