

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 267  
5555042

BETWEEN                      KIM LA  
   Applicant  
  
A N D                              ALPHA LABORATORIES  
   (NZ) LIMITED  
   Respondent

Member of Authority:      Anna Fitzgibbon  
  
Representatives:            Gregory Bennett, Representative for the Applicant  
   David Luttig, Representative for the Respondent  
  
Submissions Received:    06 August 2015 from the Applicant's representative  
   02 September 2015 from the Respondent's  
   representative  
  
Date of Determination:    04 September 2015

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A. Alpha Laboratories (NZ) Limited is ordered to contribute \$1000 towards Ms Kim La's costs. Costs are to be paid to Ms La within 14 days of the date of this determination.**

**The substantive determination**

[1] In a determination of the Authority dated 05 June 2015<sup>1</sup> the Authority determined that:

- the application by the respondent, Alpha Laboratories (NZ) Limited (Alpha) to dismiss paras 1, 2.1 to 2.8 and 3.1(i) of the applicant, Ms Kim La's statement of problem pursuant to clause 12A of Schedule 2 of the Employment Relations Act 2000 was declined.

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<sup>1</sup> [2015] NZERA Auckland 158

- Costs to be reserved.

### **Costs Determination**

[2] A memorandum of costs was filed on behalf of Ms La seeking a contribution of \$1,000 (including GST) towards her costs. It was submitted on behalf of Ms La that the application by Alpha to strike out her claim lacked merit and increased her costs. A record of attendances was provided by Ms La's representative. Costs incurred to defend the application brought by Alpha totalled \$1200 plus GST.

[3] On behalf of Ms La it was submitted that the starting point for costs in the Authority is a daily rate of \$3500 per hearing day. Because Alpha's application was dealt with on the papers, it was submitted that costs should be set at \$875. However, Ms La's representative submitted that Alpha's application lacked merit and that therefore an uplift in costs to \$1000 was warranted.

[4] In submissions filed in opposition on behalf of Alpha, Mr Luttig argues that the actual invoice was not supplied and that the costs detailed in the draft invoice were unrealistic. Mr Luttig also claims that because the Authority in its determination on the preliminary matter did not state Alpha's application to be unmeritorious there should be no uplift in costs.

[5] The Authority's power to award costs arises from Schedule 2, clause 15 of the Employment Relations Act 2000 (the Act). This confers a wide discretion on the Authority to award costs, on a principled basis.

[6] The principles guiding the Authority's approach to costs are set out by the full Employment Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*<sup>2</sup>. The general principle is that costs follow the event, and I see no reason to depart from that in this case. Ms La was successful in resisting the application to strike out her statement of problem by Alpha.

[7] In my view the dispute before the Authority was a reasonably straightforward matter. The Employment Court in *Carter Holt Harvey v. Eastern Bays Independent Industrial Workers Union and Ors*<sup>3</sup> observed that a notional daily tariff approach,

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<sup>2</sup> [2005] 1 ERNZ 808

<sup>3</sup> [2011] NZEmpC

which was to be adjusted in a principled way, was best suited to the Authority's unique jurisdiction. I adopt that approach.

[8] The normal starting point for costs in the Authority is \$3,500 per day, *Fifita (aka Bloomfield) v. Dunedin Casinos Limited*<sup>4</sup>. This matter was dealt with by me on the papers and involved considering the statement of problem, the application to dismiss the statement of problem and the response made by Ms La. Ms La seeks \$1,000 including GST towards her costs. This sum represents less than a half day in the Authority. The draft invoice details attendances on behalf of Ms La in defending Alpha's application. I accept these costs to be reasonable in the circumstances.

[9] Accordingly, I order Alpha to contribute \$1,000 towards the costs of Ms La.

[10] Costs awarded are to be paid within 14 days of the date of this determination.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**

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<sup>4</sup> [2012] NZERA Christchurch 219