

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2011] NZERA Christchurch 156
5323687

BETWEEN MAREE JOAN LEE
Applicant

AND AA TRADE & ENTERPRISE
LTD
Respondent

Member of Authority: M B Loftus

Representatives: Mr Rex Hancock, Advocate for Applicant
Mr Aiman Almazroey, on behalf of the Respondent

Submissions Received 28 September 2011 from the Applicant
12 October 2011 from the Respondent

Determination: 13 October 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 15 September 2011 I accepted that Ms Lee had a personal grievance, albeit not the one claimed and in circumstances where the resulting award was, in my view, minimal.

[2] The issue of costs was reserved with Ms Lee, as the successful applicant, being advised that if she wished to seek a contribution toward costs she should do so via a written application. She does.

[3] The application tendered via her advocate reads, in its entirety:

I wish to make application for costs, in this case to cover the preparation of documents, hearing, lodging and serving of the personal grievance documents on the respondent. This was extremely troublesome and involved a lot of time because the respondent was being particularly obstructionist and difficult to deal. This also involved a lot of correspondence with Elizabeth Alan and advice from her.

I respectfully submit that my cost of \$1,475.00 are reasonable and given that it was only a half day hearing.

[4] The response is even more succinct. It states:

We are happy to make payments for the amount which was stated in the Determination of the Authority NZ\$1,000.00 only for Ms Lee but on the other hand we believe that we are not obliged to bare any extra costs as we did not hire any lawyers to defend the case.

[5] I can not say I found the submissions particularly helpful, especially as the respondent's approach is untenable. It is well accepted that costs follow the event unless there is a compelling argument to the contrary. No such argument has been tendered and therefore an award in Ms Lee's favour is inevitable.

[6] Normally the Authority will assess costs on a daily tariff basis: refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808. In assessing that tariff a common starting point is \$3,000 per day: refer *Chief Executive of the Department of Corrections v Tawhiwhirangi (No 2)* [2008] ERNZ 73. From that point adjustment may be made depending on the circumstances.

[7] Notwithstanding Ms Lee's proposition it was a half day hearing, my records suggest less – at best a quarter of a day. Therefore, and applying the above formula, the amount payable would be some \$750.

[8] Included in the claim is recompense for advice received from a third party, Ms Alan (more correctly Ms Allan). Ms Allan is an officer of the Authority. She does not give advice and certainly does not render a charge for comments made in the performance of her duties. This portion of the claim is, in my view, untenable.

[9] Given the above, and a total lack of useful submission from either party, I conclude a contribution of \$500 to be appropriate.

Conclusion

[10] The respondent, AA Trade and Enterprises Limited, is to pay to Ms Lee the sum of \$500 (five hundred dollars) as a contribution toward costs.

Mike Loftus
Member of the Employment Relations Authority