

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2021] NZERA 20
3064512

BETWEEN SUELLEN LUGG
Applicant

AND GLAXOSMITHKLINE CONSUMER
HEALTHCARE ULC
Respondent

Member of Authority: David G Beck

Representatives: Kirsty Petersen, advocate for the Applicant
Julia MacGibbon, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 23 December 2020 from the Applicant
18 January 2021 from the Respondent¹

Date of Determination: 19 January 2021

COST DETERMINATION OF THE AUTHORITY

The Determination

[1] On 9 December 2020 the Authority issued a determination finding that:

- a. GlaxoSmithKline Consumer Healthcare New Zealand ULC (“GSK”) must pay Suellen Lugg redundancy compensation as per her employment agreement and interest on such.
- b. GSK must pay Suellen Lugg compensation of \$8,000 pursuant to section 123(1)(c)(i) Employment Relations Act 2000.

- c. Suellen Lugg did not breach owed good faith obligations sufficient to award a penalty to GSK.

[2] The parties were asked to explore resolving costs by agreement but failed to do so.

Submissions from Suellen Lugg

[3] Ms Petersen's brief submission highlighted that in addition to a one-day investigation meeting, costs were incurred in two legal submissions on preliminary issues involving admissibility of evidence and interpretation of the employment agreement's redundancy provision. The latter issue also involved oral submissions made on 16 June 2020.

[4] Ms Petersen claimed \$8,000 plus GST and provided a breakdown of amounts billed to Ms Lugg totalling \$13,574.50.

Submission from GSK

[5] Ms MacGibbon, after traversing relevant authorities, suggested that scale costs for the one day hearing of \$4,500 was an appropriate amount and that no further costs should be awarded for the preliminary issues on the basis that the matter did not lead to a preliminary determination (it being resolved that the substantive hearing would resolve all issues).

Costs principles

[6] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000. The discretion it is accepted is guided by principles set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*¹ including: that costs are not to be used as a punishment or as a reflection on how either party conducted proceedings and that awards are to be made consistent with the equity and good conscience jurisdiction of the Authority.² These principles were confirmed as remaining appropriate in *Fagotti v Acme & Co Limited*. The principles include:

- a) There is a discretion as to whether costs will be awarded and in what amount.

¹ *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

² Section 160(2) Employment Relations Act 2000.

- b) The discretion is to be exercised in accordance with principle and not arbitrarily.
- c) The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority.
- d) Equity and good conscience is to be considered on a case by case basis.
- e) Costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award.
- f) It is open to the Authority to consider whether all or any of the parties' costs were unnecessary or unreasonable.
- g) Costs generally follow the event.
- h) Without prejudice offers can be taken into account.
- i) Awards will be modest.
- j) Frequently costs are judged against notional daily rates.
- k) The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.³

Assessment

[7] Given that Ms Lugg succeeded in all of her claims and that she incurred modest overall costs in what were relatively complex issues I intend to take a global approach that applies the above factors. I am not convinced by the contention that no costs be awarded for work undertaken on both oral and written submissions on the preliminary matters merely on the basis that the Authority did not issue a decision – the cost of research and submissions was incurred by Ms Lugg and given her overall success in this matter they should be legitimately considered.

[8] I consider it equitable that GSK make a reasonable contribution to the costs incurred by Ms Lugg and that that amount be more than the daily tariff to reflect time spent on preliminary issues. I fix that amount overall at \$7,500.

³ *Fagotti v Acme & Co Ltd* [2015] ERNZ 919 at [114].

Award

[9] I order GlaxoSmithKline Healthcare New Zealand ULC to pay Suellen Lugg the sum of \$7,500 as a contribution to legal costs.

David G Beck
Member of the Employment Relations Authority