

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2016] NZERA Christchurch 4
5577999

BETWEEN SELINA LUMB-VAIPAPA
Applicant

AND B & Y TRUST CO 2015
LIMITED
Respondent

Member of Authority: David Appleton

Representatives: Peter Cahill, Advocate for the Applicant
Yvonne Zhang, Advocate for the Respondent

Submissions Received: 6 January 2016 on behalf of the Applicant
10 January 2016 on behalf of the Respondent

Date of Determination: 22 January 2016

COSTS DETERMINATION OF THE AUTHORITY

[1] By way of a determination dated 30 November 2015¹, the Authority found that Ms Lumb-Vaipapa had been unjustifiably dismissed. She was awarded remedies as a result.

[2] I had reserved costs in that determination and invited the parties to seek to agree how costs were to be dealt with. They have been unable to agree. Accordingly, this determination addresses the issue of costs.

[3] Mr Cahill did not lodge submissions in the conventional sense, but merely set out the costs his client had incurred; namely, \$3,981.25, plus GST. Ms Zhang also did not lodge submissions as such, but did send an email to the Authority which stated, inter alia, that the respondent had ceased trading, that Mr Cahill had threatened

¹ [2015] NZERA Christchurch 187

to make it *bankrupt*, and that if Ms Zhang had to pay the costs, she could only manage \$10 a month.

The law and principles of awarding costs in the Authority

[4] The Authority's power to award costs is set out in clause 15 of Schedule 2 of the Act, which provides as follows:

15 Power to award costs

(1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.

(2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[5] The Authority must follow the principles set out in *PBO Ltd v Da Cruz*, [2005] 1 ERNZ 808 when setting costs awards. These include:

- a. There is discretion as to whether costs would be awarded and in what amount.
- 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 are 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 increased 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. That costs generally follow the event.

- h. That without prejudice offers can be taken into account.
- i. That awards will be modest.
- j. That frequently costs are judged against a notional daily rate.
- 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.

Determination

[6] First, as Ms Lumb-Vaipapa was successful in her claim, costs should be awarded in her favour. Second, there is no reason why the usual daily tariff approach should not be adopted in this case. As the Authority's investigation meeting lasted between 9.30 and 12.30, half a day's tariff is appropriate. That amounts to \$1,750.

[7] Third, Mr Cahill's costs appear to be reasonable, but there also appears to be no reason to increase costs beyond half a day's rate. Finally, it is the respondent that is to pay the costs, not Ms Zhang.

[8] In conclusion, I determine that it is appropriate for the respondent company to pay to Ms Lumb-Vaipapa a contribution towards her legal costs in the sum of \$1,750. She is also entitled to recover from the respondent the Authority's lodgement fee of \$71.56.

Orders

[9] I order the respondent to pay to Ms Lumb-Vaipapa the following sums by way of contribution towards her costs:

- a. \$1,750, plus
- b. \$71.56.

David Appleton
Member of the Employment Relations Authority