

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 47/10
5136412

BETWEEN

MARY MACFARLANE
Applicant

AND

CANTERBURY DISTRICT
HEALTH BOARD
Respondent

Member of Authority: Paul Montgomery

Representatives: Amy Shakespeare, Counsel for Applicant
Penny Shaw, Advocate for Respondent

Submissions Received: 22 December 2009 from Respondent
4 February 2010 from Applicant

Determination: 4 March 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination of this dispute between the parties issued on 12 October 2009, the Authority found in favour of the respondent. The representatives of the respective parties lodged their submissions on costs which I have studied and considered. For the respondent, Ms Shaw seeks full indemnity costs of \$6,000. Ms Shakespeare requests that costs lie where they have fallen.

Discussion

[2] Both Ms Shakespeare and Ms Shaw urge me to consider *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808 as the relevant authority in a costs setting. Ms Shaw submits that, if adopting a tariff approach, I need to consider *Chief Executive of the Department of Corrections v. Tawhiwhiangi* WRC13/07 with a starting point of \$3,000 per day, while Ms Shakespeare submits *South Trans Ltd v. Strait Freight Ltd* 8/4/08 with its starting point of between \$2,000 and \$3,000 per day as more apt.

[3] The dispute was confined to a small but relevant issue resulting from historical restructurings in the health sector. The respondent's view is Mrs Macfarlane was uncooperative in her dealings with her employer and her claim was *irrelevant and frivolous* as it was based on an expired collective agreement.

[4] While the Authority accepts the applicant appears not to have grasped the difficulty she faced in pursuing the matter, she, through her representative, sought a negotiated settlement as she continued her employment with the respondent.

[5] While I accept Mr Moran's historical evidence was not available to the applicant prior to the exchange of evidence, the correspondence between the parties had, in my view, isolated the crux of the issue prior to Mr Moran's evidence becoming available. Nonetheless, the decision to pursue her case was open to Mrs Macfarlane and that is the course she took.

[6] Standing back and viewing the matter, I am of the view a tariff approach is appropriate but modified to take into account the respondent's costs in preparing Mr Taylor's brief which was concerned with pre-employment discussions and disagreement over what was said.

[7] The investigation meeting took a little over three hours and both representatives handled their questioning very efficiently. Taking the nominal rate of \$3,000 and applying it for a half day investigation, then allowing for a contribution to provide the evidence of Mr Taylor, I order the applicant to pay the respondent the sum of \$2,250 as a contribution to its reasonably incurred costs.

[8] The representatives are to confer and agree on a time payment schedule for the costs ordered to be paid to the respondent.

Paul Montgomery
Member of the Employment Relations Authority