

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 381A/09
5140884

BETWEEN ANTHEA MCINTYRE
 Applicant

AND WHANGAROA BIG
 GAMEFISH CLUB INC
 Respondent

Member of Authority: Marija Urlich

Representatives: Mark Ryan, Counsel for Applicant
 Bryce Quarrie, Counsel for Respondent

Submissions received: 30 November 2009, from Applicant
 14 December 2009 from Respondent

Determination: 15 December 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 30 October 2009 (AA381/09) I found the Club had breached the settlement agreement entered with Ms McIntyre and made orders requiring fulfilment of the obligations owed under that agreement. Costs were reserved. The parties have been unable to resolve these issues and memoranda have been filed setting out the parties' respective positions in respect of costs.

[2] In his memorandum to the Authority Mr Ryan advises Ms McIntyre's costs in relation to this matter total \$9000 including GST. Disbursements have not been separately quantified. He seeks a costs award of \$6000 being two thirds of actual costs on the following grounds:

- Costs should follow the event;
- The Club purported to cancelled the settlement agreement without any grounds;

- The Club's actions were without merit causing Ms McIntyre to unnecessarily incur significant costs;
- \$3000 is an appropriate starting point for the Authority's tariff rather than an upper figure¹; and
- The increased amount reflects the Club's unreasonable conduct.

[3] Mr Quarrie submits that an award of costs of no more than \$1500 is warranted given:

- The investigation meeting was of short duration (a few hours) augmented by a short teleconference convened to take further evidence;
- The delayed commencement of the investigation meeting by the non appearance of Ms McIntyre and her counsel increased the Club's costs;
- The respondent filed detailed submissions in response to issues raised by the Authority whereas the applicant did not;
- The purpose of costs is not to punish or reflect disapproval for conduct which is not related to proceedings or which unnecessarily increased costs, that is the purpose of any penalty award;
- Applying *Tawhiwhirangi* an award of \$1500 is an appropriate award given the hearing lasted less than half a day; and
- Counsel's travel costs are not a relevant consideration

Determination

[4] *PBO Ltd v Da Cruz*² sets out the appropriate principles to be applied by the Authority in exercising its costs discretion.

[5] It is usual that costs follow the event. I find that an award of costs is warranted in this matter. Grounds for an award at the high end of the tariff do not exist. I accept Mr Quarries' submission that the purpose of costs is not to punish or express disapproval for conduct which does not relate to the proceedings or unnecessarily increases costs. I accept this is not the case here; the alleged breach of

¹ Citing in support *Depart of Corrections v Tawhiwhirangi* [2008] ERNZ 73 Shaw J

² [2005] 1 ERNZ 808

the settlement agreement was properly before the Authority for investigation and the parties participated in that process.

[6] In the circumstances, in particular the nature of the matters before the Authority and the short hearing time involved, and accepting \$3000 as a usual notional daily rate in the Authority, I set the costs award at \$1500.

[7] Whangaroa Big Gamefish Club Inc is ordered to pay Anthea McIntyre \$1500 in costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

Marija Urlich

Member of the Employment Relations Authority