

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
OTAUTAHI ROHE**

[2021] NZERA 260
3110072

BETWEEN SHONA KAY MCLAREN
Applicant

A N D LINCRAFT NZ LIMITED
Respondent

Member of Authority: David G Beck

Representatives: Leo Wenborn, advocate for the Applicant
Brian Swersky, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 27 May and 13 June 2021 from the Applicant
4 June 2021 from the Respondent

Date of Determination: 17 June 2021

COST DETERMINATION OF THE AUTHORITY

The Determination

[1] On 17 May 2021 the Authority issued a determination finding that:

- a. Shona Kay McLaren was unjustifiably dismissed from her employment with Lincraft NZ Limited and that Lincraft failed to adhere to good faith obligations in effecting the dismissal
- b. Lincraft NZ Limited was directed to pay Ms McLaren lost wages in the sum of \$9,800 (gross) and compensation of \$6,400 pursuant to section 123 (1)(c)(i)

Employment Relations Act 2000 (both amounts reduced by twenty percent for contribution).

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

Submission for Shona Kay McLaren

[3] Mr Wenborn submitted that having successfully obtained an unjustified dismissal ruling his client was due a significant costs contribution above the normal daily tariff. The suggested 'uplift' was made on the basis that Lincraft NZ unnecessarily prolonged proceedings including failing to constructively approach settlement offers prior to and during mediation.

Submission for Lincraft NZ Limited

[4] Apart from contesting matters in litigation and without prejudice settlement offers made that I will not traverse, Lincraft submitted my finding that Ms McLaren contributed to her grievance should be assessed when setting costs.

Costs principles

[5] 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 Act). 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

[6] The Authority does not normally take into account the parties costs incurred for mediation unless extraordinary circumstances are present and Ms McLaren's advocate and Mr Swersky in response, unfortunately sought to traverse matters discussed in mediation and without prejudice offers that were clearly confidential and cannot be considered as they breach the provisions of section 149 of the Act.

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

² Section 160(2) Employment Relations Act 2000.

Assessment

[7] A general principle for a successful party is that costs should 'follow the event' and here Ms McLaren was moderately successful in her unjustified dismissal claim albeit that her remedies were reduced for contributory conduct, in an investigation meeting that took a day as well as the need to consider further material and legal submissions.

[8] In these circumstances, I consider the normal daily tariff should apply as no extraordinary circumstances have been brought to my attention that would persuade me otherwise.

Award

[9] **I order Lincraft NZ Limited to pay Shona Kay McLaren the sum of \$4,500.00 as a contribution to her legal costs incurred and a filing fee of \$71.56.**

David Beck
Member of the Employment Relations Authority