

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2011] NZERA Christchurch 62  
5283785

BETWEEN

KAYE MOODIE  
Applicant

A N D

THE MILL LIQUORSAVE  
LIMITED  
Respondent

Member of Authority: Helen Doyle

Representatives: Applicant in person  
Christine Sargeson, Counsel for Respondent

Submissions Received: 4 April 2011 from Applicant  
9 March 2011 from Respondent

Date of Determination: 6 May 2011

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In my determination issued on 17 February 2011, I did not find the applicant's personal grievances were made out and I reserved the issue of costs. I have now received submissions from the respondent and the applicant. The applicant, although represented at the investigation meeting made written submissions on her own behalf.

**The respondent's submissions**

[2] Ms Sargeson submits that the respondent's actual legal costs were \$10,932.50 and that disbursements for airfares and accommodation for two witnesses and counsel were \$3,136.

[3] Ms Sargeson seeks a contribution towards legal costs and reimbursement of full disbursements. The hearing lasted three quarters of a day and involved six witnesses. Ms Sargeson submits that the majority of the respondent's five witnesses had to travel to attend the Dunedin hearing from New Plymouth and Christchurch and that the respondent properly engaged counsel who was local to the national human resources operations director in New Plymouth. She submits that, in light of the large

number of employment relationship problems and witnesses, extensive preparation was required and that the legal fees do not include any preliminary work undertaken in relation to the grievances and mediation. She further submits that, prior to the hearing, the respondent attempted to resolve the matter by offering in a letter headed without prejudice save as to costs the amount of \$2,000 under s.123(1)(c)(i) of the Employment Relations Act 2000.

### **The applicant's submissions**

[4] Ms Moodie in her written submissions states that it was not mentioned to her during any discussions with her lawyer that she may have to pay some of the respondent's costs. She also submits that she does not have the funds to pay because she has had to leave family and friends and find employment in a town outside of Dunedin. Ms Moodie submits that the extra costs to relocate has *crippled me* and if she is to contribute in any way, could it be at the lower end of the scale as she simply cannot afford to pay.

### **Determination**

[5] This was a matter that was able to be concluded comfortably within a day. In the leading Employment Court case concerning costs in the Authority of *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808, the Court set out the principles to be applied by the Authority when considering costs.

[6] There is a discretion as to whether costs are awarded and in what amount. That discretion is to be exercised in accordance with principle and not arbitrarily. Equity and good conscience is to be considered on a case-by-case basis.

[7] This matter had some factual complexities although it was not legally complex. Frequently costs in the Authority are judged against a daily rate recognised in Employment Court judgements to be up to \$3,500. Other matters, however, can be taken into account to increase or reduce the notional daily tariff.

[8] I accept that there was an attempt to resolve the matter and that there was a need for travel for counsel and witnesses for the respondent

[9] I do not take into account Ms Moodie's submission that she did not know that, if unsuccessful, she would have to pay costs. Ms Moodie was represented at the

time and the respondent should bear no responsibility in relation to that matter. It will be obvious to her now from the respondent's submission that there were considerable costs incurred by the respondent to defend her claim.

[10] The matter, however, that the Authority can and should take into account is Ms Moodie's financial situation. There was evidence given during the investigation meeting about the need for Ms Moodie to relocate to a new town to find employment. I also accept Ms Moodie's submission that she has no funds in reserve to make a payment of costs.

[11] I moderate therefore any award that I go on to make for this reason. In the circumstances, I am of the view that a fair and reasonable amount to award the respondent is the sum of \$1,500 for costs and disbursements. It seems to me that this is the sort of case where a higher award would simply result in non-payment.

[12] Ms Moodie should attempt to enter into a repayment schedule with the respondent and both parties can return to the Authority if assistance is needed in that matter.

[13] I order Kaye Moodie to pay to The Mill Liquorsave Limited the sum of \$1,500 being costs and disbursements.

Helen Doyle  
Member of the Employment Relations Authority