

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2014] NZERA Auckland 302
5465447**

BETWEEN PUNA CHAMBERS INC
Applicant

AND TANIA CHRISTENSEN
Respondent

Member of Authority: Eleanor Robinson

Costs Submissions 4 July 2014 from Applicant
30 June 2014 from Respondent

Determination: 14 July 2014

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination [2014] NZERA Auckland 264 the Authority found that the determination *Christensen v Puna Chambers Inc* [2013] NZERA Auckland 470 was not to be set aside.

[2] In that determination costs were reserved. Submissions have been filed by the parties in respect of costs.

[3] Mr Scott McKenna, on behalf of Ms Christensen, submits that she has incurred actual costs of approximately \$460.00 including GST, and is seeking a costs award that will reflect the inappropriateness of the Application to set aside determination *Christensen v Puna Chambers Inc* [2013] NZERA Auckland 470 on the basis that the Application:

- was outside of the Authority's jurisdiction and doomed to failure from the outset;
- was only made as a result of Ms Christensen taking steps to enforce the Authority's determination in her favour;
- made unnecessary and baseless allegations of serious dishonesty against the Respondent and her legal advisors; and
- thereby increased Ms Christensen's stress level initially caused by the Applicant's behaviour towards her throughout the Authority's proceedings.

[4] Mr Hayes, on behalf of Puna Chambers Inc, submits that there is no reason to depart from the usual practice of the Authority in setting costs, on the basis that:

- Costs should not be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct;
- The Respondent's allegations of stress are irrelevant and in any event a normal incident of litigation; and
- There is no behaviour on the part of the Applicant which has increased costs.

Determination

[5] The principles applicable to awards of costs in the Authority are well established. It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*¹ that costs are modest. It is also a principle that: "*Costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful parties conduct.*"

[6] A tariff based approach is that usually adopted by the Authority, which has the discretion to raise or lower the tariff, depending on the circumstances. For a full day Investigation Meeting the normal tariff would equate to an award of \$3,500.00.

[7] The Investigation Meeting in respect of this matter was dealt with "on the papers". It was a relatively straightforward matter, no hearing was required and the matter was decided on the basis of a telephone conference and on written submissions from the parties.

[8] Costs normally follow the event and Ms Christensen was the successful party in the matter.

[9] Taking account of the submissions by the parties, I consider it appropriate to base the level of costs on the normal tariff in the Authority and to take as an indication for the decision on costs a quarter day investigation meeting as the appropriate amount of time required to be spent on this matter, with the corresponding costs tariff of \$875.00.

¹ [2005] 1 ERNZ 808

[10] Accordingly Puna Chambers Inc is ordered to pay Ms Christensen the sum of \$460.00 (including GST) as costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

Eleanor Robinson
Member of the Employment Relations Authority