

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2016] NZERA Wellington 4  
5459951

BETWEEN            PORSE EDUCATION    AND  
                                 TRAINING LIMITED  
                                 Applicant

AND                    AMY ROYDHOUSE  
                                 Respondent

Member of Authority:    Trish MacKinnon

Representatives:        Libby Brown, Counsel for Applicant  
                                 Matthew Lawson, Counsel for Respondent

Investigation Meeting:    On the papers

Submissions Received:    16 June and 23 September 2015, from the Applicant  
                                 27 July 2015 from the Respondent

Determination:            6 January 2016

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]    In my determination of 31 March 2015 of the claims and counterclaims made by PORSE Education and Training (NZ) Limited (PORSE) and Amy Roydhouse, I disposed of all claims except for the issue of holiday pay and reserved the issue of costs. After considering affidavit evidence and submissions of the parties I issued my decision on the matter of holiday pay on 5 January 2016<sup>1</sup>.

[2]    With the exception of the holiday pay matter, I dismissed all of the claims and counterclaims made by PORSE and Ms Roydhouse against each other. PORSE's unsuccessful claims against Ms Roydhouse included damages of over \$30,000 and penalties of \$15,000.

[3]    Ms Roydhouse's counterclaims included a penalty of \$10,000 against PORSE and holiday pay. She was successful in being awarded \$3,287.67 in holiday pay.

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<sup>1</sup> [2016] NZERA Wellington 1

[4] The parties have taken different approaches in their submissions to the issue of whether costs should be awarded. PORSE submits that it would be appropriate for costs to lie where they fall. Ms Roydhouse disagrees and, through her counsel Mr Lawton, seeks reimbursement of her full costs of \$27,289.50 including GST.

[5] Both parties have alluded to the well-established and well-known principles applicable to an award of costs in the Authority as identified in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*.<sup>2</sup> The appropriateness and applicability of those principles to costs awards in the Authority has recently been reconfirmed by the Full Court of the Employment Court.<sup>3</sup>

[6] Additionally, Mr Lawton has referred to the High Court case of *DFC New Zealand Ltd v Bielby*<sup>4</sup> to support his claim for full costs. Thomas J in an *addendum* to his judgment outlined the circumstances in which he considered it appropriate to depart from the scale costs that applied under High Court Rules and award a higher sum. These were (and I summarise):

- (1) Where an argument or arguments are advanced which are without substance.
- (2) Where the process of the Court is abused.
- (3) Where solicitors or counsel have failed to comply with the requirements of the rules or an order or direction of the Court in respect of procedural matters, especially in meeting prescribed time limits.
- (4) Where the case is poorly pleaded or presented.
- (5) Where it becomes apparent that a party has failed to explore the possibility of settlement when a compromise could reasonably have been expected to ensue, or where a party has unreasonably or obdurately resisted a settlement of a claim or dispute.
- (6) Where a party takes a technical or unmeritorious point or defence, and *fails*.
- (7) Where the proceeding could have been more appropriately conducted in the District Court rather than (the High) Court.

[7] In Mr Lawton's submission PORSE was intent on "crushing" Ms Roydhouse. In support of this he cited matters involving the parties that were, or had been, before the District Court and the Disputes Tribunal. Although the subject matter of the cases in the other jurisdictions were not directly relevant to the matters before the Authority they formed part of the background in his view. In his submission the claims PORSE brought against Ms Roydhouse were without substance and constituted an abuse of

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<sup>2</sup> [2005] 1ERNZ 808.

<sup>3</sup> *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135.

<sup>4</sup> (1990) 3PRNZ 405

process. He referred to them as "effectively trying to bully (Ms Roydhouse) through tying her up in constant litigation and conflict".

[8] I do not find those submissions persuasive. While PORSE was unsuccessful in its claims, no evidence was presented that supports a claim of abuse of process. I also note that the application of the *Da Cruz* principles allows for a party's conduct to be taken into account where it has increased costs unnecessarily.

[9] The principles include the discretionary nature of costs awards, a discretion which is to be exercised in accordance with principle rather than arbitrarily. Costs generally follow the event, which normally results in the successful party being entitled to a reasonable contribution to its actual costs from the unsuccessful party. Costs for each case are considered in the light of the particular circumstances. They are frequently judged against a notional daily tariff which is currently \$3,500.

[10] In this instance there was partial success by Ms Roydhouse and failure in all claims by PORSE. I find it is appropriate to award costs to the successful party but to reflect the partial nature of the success in the amount awarded. The investigation took place over three days. An application of the Authority's notional daily tariff would result in an award of \$10,500. Taking all circumstances into account I find an award of \$7,000 to be appropriate.

### **Determination**

[11] PORSE is ordered to contribute to Ms Roydhouse's costs in the sum of \$7,000.

Trish MacKinnon  
Member of the Employment Relations Authority