

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2014] NZERA Auckland 269  
5444010

BETWEEN                      PRODUCT PLACEMENT  
   2011 LIMITED  
   Applicant

AND                                JILL COCKBURN  
   Respondent

Member of Authority:        Robin Arthur

Representatives:             Richard Upton, Counsel for the Applicant  
   Respondent in person

Submissions:                 3 June 2014 from the Applicant  
   None from Respondent

Determination:                27 June 2014

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A.     Jill Cockburn must pay \$6000 to Product Placement 2011 Limited as a reasonable contribution to its costs.**

[1]     Product Placement 2001 Limited (PPL) sought an award of costs following its successful application for a compliance order, a penalty and special damages against its former employee, Jill Cockburn.<sup>1</sup>

[2]     Ms Cockburn did not lodge a reply to PPL's application for costs. I have determined costs on the basis of PPL's application and the principles guiding the Authority's discretion to award costs as described in *PBO Limited v Da Cruz*.<sup>2</sup>

[3]     In the period following mediation through to completion of the Authority investigation PPL incurred legal costs of \$14,360. It sought a contribution of \$10,000

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<sup>1</sup> [2014] NZERA Auckland 169.

<sup>2</sup> [2005] 1 ERNZ 808 at [44]-[47].

to those costs for two reasons. Firstly, Ms Cockburn had not accepted an offer to settle the matter on a 'without prejudice save as to costs' basis made before the Authority investigation. Secondly, her actions in responding to PPL's claim were said to have unnecessarily increased its costs.

[4] In late February, just over a month before the Authority investigation meeting, PPL offered to settle the matter on the basis of Ms Cockburn paying \$10,000 to it (inclusive of its costs). The Authority's determination awarded PPL a total of \$9,215.08 – comprising a penalty and special damages – but that amount did not include any award for costs as they were reserved. Taking the total awarded and allowing for the likely award of costs (even if well below the Authority's usual daily tariff of \$3500), Ms Cockburn's overall liability to PPL was more than the settlement offer she did not accept. On that basis I have accepted her failure to settle the matter earlier and more economically with PPL was a factor warranting an uplift on the usual daily tariff.

[5] Costs may not be used as a punishment or to express disapproval but conduct by a party that unnecessarily increases costs to the other party can be taken into account in raising or lowering the tariff.

[6] PPL submitted an increase on the tariff was warranted because Ms Cockburn did not lodge a statement in reply and then lodged some evidence that was inadmissible or insufficient. It acknowledged the Authority determination did not accept PPL had established every alleged breach of duty by Ms Cockburn but PPL submitted her conduct in not earlier replying to its statement of problem meant the company was deprived of the opportunity to be more selective about which claims to pursue in the investigation.

[7] Without detailing each aspect of the claims made and the eventual evidence on them, I have accepted the result of Ms Cockburn's conduct in responding to PPL's claim was that the Authority investigation was drawn out unnecessarily when it could have been more focussed and limited. Ms Cockburn must carry some of the burden for the resulting increase in PPL's costs.

[8] Costs follow the event of PPL's overall success in the Authority determination on its application for a compliance order, a penalty and special damages. The two

factors already outlined supported an uplift of the usual daily tariff for costs of \$3500. Taking into account the principle that an award of costs should also be modest I considered that uplift should be to a total of \$6000 for the one-day investigation meeting. That is the amount Ms Cockburn has been ordered to pay as a reasonable contribution to the costs that I have accepted were reasonably incurred by PPL.

Robin Arthur  
Member of the Employment Relations Authority