

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 399  
5389801

BETWEEN                      LOUISE REID  
   Applicant  
  
AND                                HARRISON  
   ENTERPRISES LIMITED  
   Respondent

Member of Authority:        K J Anderson  
  
Representatives:              J McBride, Counsel for Applicant  
   A Cook, Counsel for Respondent  
  
Submissions received:        9 August 2013 from Applicant  
   22 August from Respondent  
  
Determination:                5 September 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 15 July 2013<sup>1</sup> the Authority found that the dismissal of Ms Reid was unjustified. The parties were invited to resolve the issue of costs but have not been able to do so. Submissions on costs have been received from the parties in anticipation of the Authority determining this matter.

[2] The applicant submits that she has incurred total costs of \$17,589.49 (including GST) and the application fee paid to the Authority. The submissions for the applicant acknowledge the tariff based approach of the Authority and the principles set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*.<sup>2</sup> The Authority is referred to a number of judgments from the Employment Court relative to defining reasonable costs and where contributory conduct was found; as it was in regard to Ms Reid's conduct relating to the personal grievance, to the extent that the remedies were reduced by 40%. Because the Authority applies a tariff based approach to awarding

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<sup>1</sup> [2013] NZERA Auckland 301

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

costs and this is quite different to the assessment of reasonable costs model adopted by the Employment Court, judgments of the Court such *Binnie v Pacific Health*<sup>3</sup> are not applicable. However, it is accepted that contributory conduct should not be a factor in regard to the consideration of costs, as the applicant has already been penalised, as it were, by the reduction in the remedies that would have been awarded but for the contributory factors.

[3] The submissions for the applicant acknowledge the tariff based approach of the Authority and the current rate of \$3,500 for a one day investigation meeting. But in support of a higher award of costs than the usual daily tariff, it is urged that a multiplier of 2.5 should be applied and hence an order for the sum of \$8,750 should be made. In support of this proposition the submissions for the applicant (summarised) refer to:

- (a) Alleged deficiencies in the manner in which the respondent chose to defend the claims of Ms Reid, including inadequate documentation and presentation; and
- (b) The respondent self-representing (via Ms Harrison) rather than engaging professional assistance, with the alleged effect being that the conduct of the case by the respondent lacked precision and clarity. And written closing submissions were required in order to allow the respondent to adequately summarise their position.

[4] The submissions for the respondent also refer to the principles set out in *Da Cruz* and the tariff based approach of the Authority is acknowledged. The respondent rebuts the increase sought by the applicant and refers to the investigation meeting taking less than a day.

### **Determination**

[5] I do not accept that there was anything particularly untoward in regard to the manner in which the respondent conducted its case, and it does not always follow that because a party is legally represented that matters will be conducted more effectively. I conclude that there are no factors that warrant an increase in the usual tariff for what was, effectively, a one day hearing.

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<sup>3</sup> [2002] 1 ERNZ438 (CA)

Given the overall circumstances, I conclude that it is appropriate that the respondent should make a reasonable contribution to the costs incurred by Ms Reid.

[6] Pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000, Harrison Enterprises Limited is ordered to pay to Ms Louise Reid the sum of \$3,500.00 within 28 days of the date of this determination.

**K J Anderson**  
**Member of the Employment Relations Authority**