

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE**

[2020] NZERA 254
3081672

BETWEEN GEORGIA ROGERS
 Applicant

AND WELLINGTON TOYS LIMITED
 Respondent

Member of Authority: Eleanor Robinson

Submissions received: from the Applicant
 12 June 2020 from the Respondent

Determination: 26 June 2020

COSTS DETERMINATION OF THE AUTHORITY

[1] In determination [2020] NZERA 215 it was determined that the Applicant, Ms Georgia Rogers, had not raised a personal grievance with the Respondent, Wellington Toys Limited (WTL) within the statutory 90 days' time period.

[2] Costs were reserved in the hope that the parties would be able to settle this issue between them. Unfortunately they have been unable to do so, and the parties have filed submissions in respect of costs.

[3] The matter was determined 'on the papers'.

[4] Mr Mitchell, on behalf of WTL, is seeking costs on an indemnity costs basis in the sum of \$11,118.80 plus GST.

[5] The Respondent submits that indemnity costs should be awarded on the basis that it incurred costs in defending the matter that it should not have had to incur.

[6] Mr Halse, on behalf of Ms Rogers, claims that the conduct of the WTL representative, Mr Mitchell, led to unnecessary and additional cost to the Applicant.

[7] Mr Halse submits that the Respondent's application for costs should be dismissed.

Principles

[8] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 which states:

15 Power to award costs

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[9] Costs are at the discretion of the Authority, as observed by the Chief Judge Colgan in *NZ Automobile Association Inc v McKay*¹.

[10] The principles and the approach adopted by the Authority on which an award of costs are made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz (Da Cruz)*².

Costs Award

[11] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*³ that costs are modest. Principles also include that costs are reasonable and that they normally follow the event.

[12] I see no reason for not applying these principles in this case. WTL was the successful party in the matter.

[13] WTL are seeking costs on an indemnity basis. As observed by the Employment Court in *Stormont v Peddle Thorp Aitken Limited*: “Indemnity costs generally require exceptionally bad behaviour”.⁴ I am not persuaded that this applies in this matter.

[14] Costs in the Authority are made in accordance with a daily tariff amount which is currently set at \$4,500.00 for the first day of hearing. This matter was determined ‘on the papers’. Costs normally follow the event and the Respondent is entitled to a contribution towards its costs.

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2005] 1 ERNZ 808

⁴ *Stormont v Peddle Thorp Aitken Ltd* [2017] NZEmpC 159 at [8]

[15] I consider it appropriate to base the level of costs on the normal tariff in the Authority as at the date of filing and to take to one third of a day investigation meeting as the starting point.

[16] Accordingly Ms Rogers is ordered to pay WTL the sum of \$1500.00 towards its legal costs, pursuant to clause 15 of Schedule 2 of the Act.

Eleanor Robinson
Member of the Employment Relations Authority