

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2022] NZERA 60
3126834

BETWEEN REBECCA SCHOLLUM
Applicant

AND IN RESIDENCE LIMITED
Respondent

Member of Authority: Nicola Craig

Representatives: Simon Mitchell, counsel for the applicant
Stephan Marshall, agent for the respondent

Submissions received: 10 February 2022 from the applicant
Nothing received from the respondent

Date of determination: 28 February 2022

COSTS DETERMINATION OF THE AUTHORITY

[1] The Authority issued a determination in a claim by Rebecca Schollum against In Residence Limited (In Residence or the company).¹

[2] Ms Schollum was successful in her claim that she was unjustifiably dismissed by In Residence when it made her redundant. She was awarded \$7,800.00 in lost wages and \$17,500 as compensation for humiliation, loss of dignity and injury to feelings.

¹ *Schollum v In Residence Limited* [2022] NZERA 13.

[3] The parties were to seek to resolve costs and a timetable set if they were unable to do so. Ms Schollum's representative invited discussion on costs but received no response from In Residence.

[4] Submissions seeking costs were lodged on behalf of Ms Schollum. No submissions were received from the company within the time period set.

What principles apply to costs?

[5] The Authority has the power under clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) to award costs. The Authority's discretion is governed by principles which were outlined by the full Employment Court in the *PBO Limited (formerly Rush Security Limited) v Da Cruz* decision.² These principles include that costs will usually follow the event and the discretion be exercised in accordance with principle and not arbitrarily, considering equity and good conscience.

What costs should be awarded here?

[6] Ms Schollum was successful in her sole claim. She was awarded remedies and there was no suggestion of any contribution on her part so no deduction from remedies was warranted. Ms Schollum is entitled to a contribution towards her costs.

[7] The starting point is the Authority's daily tariff; \$4,500 for the first day of an investigation meeting. The evidence and submissions in this matter were completed in the morning so only a proportion of the full day's tariff should be the starting point.

[8] Ms Schollum has incurred somewhat more than \$4,500 in actual costs. She seeks an increase on the tariff on the grounds she was entirely successful in her claim, the matter was readily resolvable and an offer was made to settle.

[9] I accept the submissions on Ms Schollum's behalf that the significant facts in this matter were undisputed and the matter should have been able to be sorted by agreement between the parties.

[10] On 11 May 2020 Ms Schollum's previous representative conveyed an offer to In Residence in an email clearly marked "Without prejudice save as to costs". The offer was made well before substantial costs were incurred in preparation for and remote

² *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.

attendance at the investigation meeting. The email allowed sufficient time for consideration and acceptance of the offer. This communication has the effect of a Calderbank offer.

[11] Ms Schollum offered to settle this matter for payment of three months' pay, \$15,000 compensation, a contribution to her legal costs, apology and repayment to the government of wage subsidy received in her name.

[12] The substantive determination ordered payment of three months' wages and a little more compensation than that incorporated in the without prejudice offer. There is no evidence that the apology sought created any difficulties for In Residence. At the investigation meeting Mr Marshall indicated that the final item, the wage subsidy repayment, had been done, so presumably that element was not a hinderance to any settlement.

[13] Ms Schollum was awarded a little more than the without prejudice offer made. In Residence would have been required to pay slightly less had it accept the offer. Its rejection of a reasonable offer warrants a substantial uplift from what would otherwise have been awarded in costs

[14] In Residence Limited is ordered to pay Ms Schollum \$4,500 as a contribution to her costs and \$71.56 for the Authority's filing fee within 21 days of the date of this determination.

Nicola Craig

Member of the Employment Relations Authority