

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2013] NZERA Christchurch 85
5391383

BETWEEN

HEATHER SMITH
Applicant

A N D

CRAIG'S HAIRDRESSERS
LIMITED
Respondent

MEN'S
(2010)

Member of Authority: David Appleton

Representatives: Garry Clarke, Counsel for Applicant
John McGlashan, Counsel for Respondent

Submissions Received: 18 April 2013 from Applicant and 6 May 2013 from
Respondent

Date of Determination: 9 May 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] Ms Smith was successful in her personal grievance claim to the Authority, and was awarded remedies pursuant to the Authority's determination dated 6 March 2013. She now seeks costs in the sum of \$3,500. The respondent resists this and argues that the contribution to her costs should be in the sum of \$1,725.

[2] The leading case relating to the award of costs in the Authority remains PBO Ltd (formerly Rush Security Ltd) v Da Cruz [2005] ERNZ 808. This sets out the principles to apply in determining the award of legal costs, which include the following:

- a. Costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.

- b. It is open to the Authority to consider whether all or any of the parties' costs were unnecessary or unreasonable.
- c. Costs generally follow the event.
- d. Awards will be modest.
- e. Frequently costs are judged against a notional daily rate.

[3] It is accepted by the respondent that a contribution should be made by it to Ms Smith's costs, according to the principle that costs normally follow the event.

[4] There were no unusual aspects to this case, nor any conduct which increased costs unnecessarily, to my knowledge. Counsel for Ms Smith does not provide a detailed breakdown of the costs incurred by his client, and so it is difficult to ascertain whether the costs incurred were reasonable. Whilst I have no reason to doubt that they were, this is a case where the normal practice of awarding costs in accordance with a notional daily rate or tariff appears to be appropriate.

[5] This approach will mean that the costs to be awarded will be more modest than those sought by Ms Smith, as the investigation meeting lasted half a day, but that will be in accordance with the *Da Cruz* principle that awards will be modest.

[6] In accordance with the notional daily rate approach, I order that the respondent pay to Ms Smith a sum equal to half of the current notional daily rate of \$3,500; namely \$1,750. This sum is due to be paid from the date of this determination.

David Appleton
Member of the Employment Relations Authority