

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
OTAUTAHI ROHE**

[2022] NZERA 452
3148041

BETWEEN LAURA SUSANNE FORREST
 SMITH
 Applicant

AND SUN KISSED TAN LIMITED
 Respondent

Member of Authority: David G Beck

Representatives: Rebecca Webber, counsel for the Applicant
 Mathew Docherty for the Respondent

Investigation Meeting: On the papers

Submissions Received: 23 August 2022 from the Applicant
 24 August 2022 from the Respondent

Date of Determination: 9 September 2022

COST DETERMINATION OF THE AUTHORITY

The Determination

[1] On 10 August 2022 the Authority issued a determination finding that:

- a. Laura Smith was unjustifiably dismissed from her employment with Sun Kissed Tan Limited.

- b. Sun Kissed Tan Limited were directed to pay Ms Smith lost wages in the sum of \$6,393.60 (gross) and compensation of \$12,000 pursuant to section 123 (1)(c)(i) Employment Relations Act 2000.

[2] The parties were asked to explore resolving costs by agreement but failed to do so.

Submission for Ms Smith

[3] Ms Webber briefly submitted that having successfully obtained an unjustified dismissal ruling her client, who was legally aided, seeks a contribution to costs of \$3,100 to repay her legal aid grant and the Authority application fee of \$71.56. Ms Webber also pointed to a declined Calderbank offer made to Sun Kissed Tan Limited just prior to the investigation meeting in the amount of \$15,000.

Submission from Sun Kissed Tan Ltd

[4] Mr Docherty's submission centred on his belief that a legally aided person had an inherent advantage in pursuing an action against an employer as all costs were covered and that any costs award should consider the impact on the business of Sun Kissed Tan Limited.

Costs principles

[5] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000. The discretion, it is accepted, is guided by principles set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*¹ including that costs are not to be used as a punishment or as a reflection on how either party conducted proceedings and that awards are to be made consistent with the equity and good conscience jurisdiction of the Authority.²

The settlement offer

[6] The making of a settlement offer in the form of a 'Calderbank' is usually a relevant factor when considering costs where such does not better the award made by the Authority.

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

² Section 160(2) Employment Relations Act 2000.

Here however, the offer provided suggests that it was advanced at a late stage in litigation and insufficiently lower than what Ms Smith was awarded during the investigation meeting and Sun Kissed Tan Limited were contending the dismissal in a genuine but misguided belief, that a 90 days' trial period applied.

Assessment

[7] A general principle for a successful party is that costs should 'follow the event' and here Ms Smith was wholly successful in her unjustified dismissal claim.

[8] I consider that it is appropriate that Ms Smith can recover her full legal aid grant.

Award

[9] I order Sun Kissed Tan Limited to pay Laura Sussanne Forrest Smith the sum of \$3,100.00 as a contribution to her legal costs and the Authority filing fee of 71.56.

David G Beck
Member of the Employment Relations Authority