

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2016] NZERA Christchurch 187
5561650

BETWEEN RHONDA KAY TOSH
Applicant

A N D BUPA CARE SERVICES (NZ)
LIMITED
Respondent

Member of Authority: James Crichton

Representatives: Evan Tosh, Advocate for Applicant
Shelly Eden, Counsel for Respondent

Submissions Received: 5 October 2016 from Applicant
23 September 2016 from Respondent

Date of Determination: 18 October 2016

COSTS DETERMINATION OF THE AUTHORITY

The substantive decision

[1] In my substantive decision I found for the respondent employer (BUPA) and reserved costs.

[2] I also observed that BUPA might feel able not to pursue costs, given the relative resource imbalance between the parties. However, if costs are sought the Authority will fix them in the usual way.

The claim for costs

[3] BUPA seeks an award of costs of \$1,312.50 which represents a significant reduction on the amount it would potentially be entitled to expect, in the application to the daily tariff.

[4] I am advised total costs incurred by the successful party are nearly \$24,000 inclusive of GST so the amount claimed represents some acknowledgment of my observation that there was an imbalance in the parties' resources.

The response

[5] Mrs Tosh maintains that she can afford only a week's wages and that that sum represents a significant contribution from her.

[6] Moreover, Mrs Tosh says that BUPA's claim represents 18% of her net earnings for the year to date.

Determination

[7] It is clear the parties have done their best to try to resolve matters on their own terms but notwithstanding those efforts, a successful resolution has not been achieved.

[8] Mrs Tosh makes the point, understandably, that she has limited means, that she has made reasonable efforts to meet the employer part way and that any greater contribution from her will place undue strain on her as a low paid employee.

[9] BUPA has lowered its sights dramatically, having incurred costs of over \$20,000, and then seeking barely a twentieth of that sum, notwithstanding a greater entitlement under the usual daily tariff approach.

[10] Put shortly, the Authority has been reminded regularly of its obligation to fix costs in a business like fashion and not to be too ready to accept claims of impecuniosity from parties.

[11] Moreover, all parties must remember that recourse to the Authority comes with attendant risk, the risk that, if they are unsuccessful they will have to contribute to the costs of the successful party. In the present case, Mrs Tosh chose to proceed and was completely unsuccessful and while parties feel they want to have their day in Court, that is not something they can necessarily enjoy without cost.

[12] In the circumstances, I think Mrs Tosh should pay to BUPA the sum of \$750 as a contribution to its costs. That represents more than she was proposing to pay but less than BUPA sought. Given Mrs Tosh's reduced earnings, she is to have time to pay this amount in instalments.

James Crichton
Chief of the Employment Relations Authority