

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2013] NZERA Wellington 84
5378177

BETWEEN RICHARD UERATA-JENNINGS
 Applicant

AND THE SCOUT ASSOCIATION OF
 NEW ZEALAND
 Respondent

Member of Authority: Trish MacKinnon

Representatives: Phil Mitchell, Counsel for the Applicant
 Peter Cullen, Counsel for the Respondent

Submissions Received: 12 June 2013 for the Applicant
 25 June 2013 for the Respondent

Determination: 15 July 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] In my substantive determination of 14 May 2013, I concluded that Mr Uerata-Jennings had been unjustifiably dismissed on the grounds that the employer's investigation prior to his dismissal had been flawed. Mr Uerata-Jennings now seeks a contribution towards his costs of \$9,945 (inclusive of GST and disbursements).

[2] Mr Mitchell, counsel for Mr Uerata-Jennings, says his client's costs were significantly increased by the approach taken by The Scout Association of New Zealand ("Scouts") to overtures made by him for the negotiation of a settlement of the matter prior to the Authority hearing.

[3] Ms Batt, counsel for Scouts, notes that, at the time of his dismissal, Scouts offered Mr Uerata-Jennings the opportunity to resign and agreed to pay him his full holiday pay entitlement without deduction of the debt owed by him to the organisation. Mr Uerata-Jennings declined that offer, choosing to pursue a personal

grievance which resulted in an award calculated with a deduction of 90% due to his contribution.

[4] Scouts notes that Mr Uerata-Jennings did not succeed on the procedural grounds he cited in support of his claim for unjustified dismissal, but was found to have been unjustifiably dismissed on grounds relating to the employer's investigation. Ms Batt submits there could be no criticism of Scouts for not settling the applicant's claim in light of this.

[5] Ms Batt also notes that the debt Mr Uerata-Jennings owed Scouts as at 23 April 2012 (when judgment was entered against him in the District Court) was \$14,001.54, with interest accruing on that amount on a daily basis. As yet, Mr Uerata-Jennings has not repaid any part of that sum.

[6] Counsel for Scouts invites the Authority to exercise its equity and good conscience jurisdiction to decline to make a costs award in Mr Uerata-Jennings' favour, and to order that costs should lie where they fall.

[7] Both counsel referred the Authority to case law in which the principles for the award of costs have been articulated.

Discussion

[8] The Authority's ability to award costs is discretionary and is made following consideration of a number of principles which it has developed and applied over the years since the Employment Relations Act 2000 came into force. The principles were referred to with approval by the Full Court in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*.¹

[9] Costs normally follow the event and they should do so in this instance. I do not consider it appropriate to take into account the debt Mr Uerata-Jennings owes to Scouts in determining this costs award application. That is a separate matter that Scouts is able to pursue in a different forum.

[10] I do not accept Mr Mitchell's submission that Mr Uerata-Jennings' costs were significantly increased by the "*somewhat obdurate approach*" taken by Scouts to his attempts to achieve a negotiated settlement. It could equally be said that Mr Uerata-

¹ [2005] ERNZ 808 (EmpC)

Jennings adopted an obdurate approach in December 2011 when Scouts was willing to negotiate with him over the terms of his leaving the organisation. It seems that each party attempted, at different times, to achieve a mutually acceptable outcome, and neither was successful.

[11] The investigation meeting took one day and there were no unduly complex matters involved. I find no reason to depart from the Authority's normal daily tariff in making an award of costs. Mr Mitchell provided a global sum comprising fees, disbursements and goods and services tax. In the absence of a breakdown of the disbursements incurred, I can award only the reimbursement of the Authority's filing fee.

Determination

[12] The Scout Association of New Zealand is ordered to pay Mr Uerata-Jennings the sum of \$3,500 in costs plus \$71.56, being the Authority's filing fee, in disbursements.

Trish MacKinnon
Member of the Employment Relations Authority