

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2017] NZERA Wellington 90
5643526

BETWEEN	JOHANNA VAN DER LEE Applicant
AND	BELLA VITA DAY SPA LIMITED Respondent

Member of Authority:	Trish MacKinnon
Representatives:	Philip Southwell, Advocate for Applicant Mingfei He, for Respondent
Investigation Meeting:	On the papers
Submissions received:	13 June 2017 from Applicant 26 July 2017 from Respondent
Determination:	22 September 2017

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In my determination of 24 May 2017 I upheld a number of the claims brought by Johanna van der Lee against her former employer, Bella Vita Day Spa Limited (Bella Vita)¹. The issue of costs was reserved. Ms van der Lee now seeks a contribution to the costs she incurred in bringing her application to the Authority.

[2] The Authority's discretion to award costs arises from clause 15 of Schedule 2 to the Employment Relations Act 2000. The principles relevant to costs awards are well-settled and are outlined in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*.² They

¹ [2017] NZERA Wellington 41

² [2005] 1 ERNZ 808

were endorsed more recently in *Fagotti v Acme & Co Ltd*³. The principles are well known and do not require reiteration.

[3] The investigation of Ms van der Lee's claims occupied a full day. At the time the Authority's daily tariff was \$3,500. Mr Southwell submitted, on behalf of Ms van der Lee, a summary of the costs she incurred in bringing her claims to the Authority for determination. These totalled \$1,735.

[4] Mingfei He, the sole director of Bella Vita, responded to the Authority's invitation to reply to Ms van der Lee's cost submission by stating that the respondent company had closed and had "*no funds to pay any outstanding bills*". Ms He noted this was a decision reached by all directors and shareholders at a meeting on 20 June 2017; that she had lost thousands of dollars which she had loaned to the company; and that "*the reality is there is no money in the beauty service industry.*"

[5] As at the date of this determination I note the company remained listed on the New Zealand Company Register, albeit with a note that it was overdue in its obligation to file an annual return and the Registrar had initiated action to remove the company from the Register. A further note was to the effect that the objection period was over and the Registrar would continue with that action unless an objection had been received. There is no indication of when these notes were inserted. However, the current extant status of the company enables me to make a costs award against it.

[6] I further note that, notwithstanding Ms He's comment to the Authority about the lack of money in the beauty service industry, a new company, Bella Vita Day Spa 2017 Limited, was incorporated on 20 June 2017 with Ms He listed as the sole director and sole shareholder.

[7] Ms van der Lee succeeded in her claims for wages, holiday pay and commission. She also succeeded in her claim that a penalty should be imposed on the respondent for breaching its good faith obligations to treat her fairly in respect of her remuneration. Her personal grievances for bullying and sexual harassment were not upheld.

[8] I find it reasonable that Bella Vita be ordered to contribute to the costs Ms van der Lee incurred in bringing her claims, and that the amount of the award should reflect

³ [2015] NZEmpC 135

her partial success. Although her claim is modest, it will accordingly be reduced by 40 percent from the \$1,735 sought.

Determination

[9] Bella Vita Day Spa Limited is ordered to pay Ms van der Lee the sum of \$1,041 as a contribution to her costs.

Trish MacKinnon
Member of the Employment Relations Authority