

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2017] NZERA Christchurch 209  
3013971

BETWEEN                      YAMILESI VILLAVICENCIO  
Applicant

A N D                              GRANT JAMES LIMITED  
Respondent

Member of Authority:        Peter van Keulen

Representatives:              Phillip de Wattignar, Advocate for Applicant  
Janet Copeland, Counsel for Respondent

Investigation Meeting:        12 October 2017 and 22 November 2017 at Queenstown

Submissions Received:        22 and 24 November 2017 for Applicant  
22 and 24 November 2017 for Respondent

Date of Determination:        30 November 2017

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**DETERMINATION OF THE AUTHORITY**

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- A.    I decline Yamilesi Villavicencio's claim for a personal grievance; Grant James Limited did not dismiss Ms Villavicencio.**
- B.    Ms Villavicencio must pay \$10,000.00 as a contribution to Grant James Limited's costs.**

**Employment relationship problem**

[1] This employment relationship problem arises out of a telephone call between Yamilesi Villavicencio and Michelle Greig of Grant James Limited.

[2] Ms Villavicencio had worked for Grant James Limited as a housekeeper at Pinewood Lodge, an accommodation business in Queenstown.

[3] Ms Villavicencio had only worked eight days over a ten-day period when she fell over at work and broke her elbow on 28 February 2017. As a result, Ms Villavicencio was unfit to work.

[4] During the time that Ms Villavicencio was off work, she tried unsuccessfully to meet management of Pinewood to update them on her injury and possible return to work. In the end, Ms Villavicencio called Ms Greig on 3 April 2017.

[5] Ms Villavicencio says that in this telephone call Ms Greig dismissed her; Ms Villavicencio says Ms Greig told her that they no longer needed her service and that they did not need personnel anymore because they were overstaffed and it was low season.

[6] Ms Greig says she did not dismiss Ms Villavicencio, she merely wanted to let her know she did not need to worry about her job or rushing back to work. Ms Greig says she told Ms Villavicencio not to worry about rushing back to work as it was a quieter patch. She also asked Ms Villavicencio to inform Pinewood when she had medical clearance from ACC to return to work.

[7] Ms Villavicencio believed Ms Greig had dismissed her and she never returned to work. She subsequently raised a personal grievance for unjustified dismissal.

[8] In order to succeed with her claim of unjustified dismissal, Ms Villavicencio must establish that Grant James Limited dismissed her. If she does this then Grant James Limited must establish that the dismissal was justified.

[9] So, the resolution of this employment relationship problem turns on the issue of whether Ms Greig dismissed Ms Villavicencio. If she did then it is likely to be an unjustified dismissal due to lack of process and substantive justification for the dismissal.

### **Discussion**

[10] There is no dispute over much of what occurred leading up to the telephone call of 3 April 2017.

[11] Ms Villavicencio is a United States citizen. She is a Spanish speaker and English is her second language. In November 2016, she came to New Zealand on a tourist visa. In January 2017, she applied to work at Pinewood, seeking sponsorship to obtain a work visa.

[12] Grant James Limited offered Ms Villavicencio a position as a Housekeeper. Ms Villavicencio was granted a visa to work from 8 February 2017 until 8 February 2018. Pinewood had wanted Ms Villavicencio to start immediately after her visa was granted but Ms Villavicencio was travelling and did not start until 19 February 2017.

[13] Ms Villavicencio fell over whilst working at Pinewood on the evening of 28 February 2017. The following day she went to a medical centre and her arm was x-rayed. This revealed a fracture and Ms Villavicencio's arm was put in a cast.

[14] Ms Villavicencio emailed Pinewood and advised that her doctor had said she was unfit for work for at least the next three weeks and that she had an appointment on 10 March 2017 for further evaluation.

[15] Ms Villavicencio then called into Pinewood and dropped off an ACC form. This form specified that Ms Villavicencio was unfit for work until 15 March 2017.

[16] On 13 March 2017 Ms Villavicencio emailed Pinewood Operations and stated:

I just want to update you about the condition of my elbow. I went to the fracture clinic this past Friday. The doctor remove my cast but I am still unfit

to work at least until the 29 of April because the Ray x [sic] still show a fracture in the radial head. ... On the 29 of this month, I need to follow up with another doctor (I am not sure which kind of doctor – I need to call back the clinic) at the medical center for evaluation.

[17] On 18 March 2017 Felicia Kubieziel, the Operations Manager at Pinewood, acknowledged Ms Villavicencio's email by return email and said, "Hope to hear from you at the end of March with updates".

[18] On 29 March 2017, Ms Villavicencio had her next appointment at the fracture clinic. She received a medical certificate stating that she was unfit for work until 18 April 2017. Ms Villavicencio went straight to Pinewood after this appointment to drop off the medical certificate. When she was at Pinewood reception she asked to speak to Ms Kubieziel, but Ms Kubieziel was in a meeting. Ms Villavicencio says she left the medical certificate with the receptionist, Laura Thompson. Ms Thompson says she was not given the medical certificate and it appears that there was never a copy of the medical certificate at Pinewood – such that Ms Kubieziel and Ms Greig were not aware of the new date for Ms Villavicencio's possible return to work.

[19] Ms Thompson told Ms Villavicencio that she would get someone from Pinewood management to call her.

[20] Ms Greig received the message to call Ms Villavicencio and tried to call but could not get through to her. She then asked Ms Kubieziel to email Ms Villavicencio and ask Ms Villavicencio to call her. It was because of this email that Ms Villavicencio called Ms Greig on 3 April 2017.

*Ms Villavicencio's evidence*

[21] In Ms Villavicencio's written evidence, she says that she called Ms Greig on 3 April 2017 and Ms Greig asked her how her arm was. After she had answered this question, Ms Greig said to her that Pinewood no longer needed her service. Ms Villavicencio asked

why Pinewood had hired her and Ms Greig said that when they hired her they were in need of personnel but not anymore, because they were overstaffed and it was low season.

[22] Ms Villavicencio's oral evidence was largely consistent with this evidence. She described Ms Greig as saying "they didn't need her anymore", that it was "low season and they don't need staff" and that others were affected by this.

[23] Ms Villavicencio was adamant that this was what she heard and she was not mistaken. She described herself as being 100% sure of the conversation and from the moment she heard it she believed it to be true. On this point Ms Villavicencio believed her memory was indelible and she simply would not accept that any form of confirmation bias could have influenced her memory.

[24] Ms Villavicencio says that her actions immediately after the call were consistent with what she was told. First, she spoke to Pedro Neto, a friend that she was staying with at the time, and told him that she had been dismissed. Mr Neto described this conversation and said Ms Villavicencio told him she had been told that Pinewood "didn't need her anymore". Second, she emailed her new landlord and advised her she would not be able to move into the flat she had recently agreed to rent. Third, she called Employment New Zealand (part of MBIE) for advice.

[25] After 3 April 2017, Ms Villavicencio took other steps she says were consistent with what she was told in the call on 3 April. This included telling her ACC caseworker that she had been dismissed and telling Immigration New Zealand that she had been dismissed.

[26] Ms Villavicencio also says that Pinewood's actions were consistent with dismissal. Shortly after 3 April 2017 she was removed from the Pinewood Facebook group, this group was for Pinewood housekeeping employees so they could access weekly work rosters. And, after this date, the rosters available to this group, on the Pinewood Facebook page, did not have her listed, whereas prior to 3 April 2017 she had been listed on the rosters with a note that she was off work.

[27] Ms Villavicencio then took further advice regarding her dismissal and on 5 May 2017, her representative raised a personal grievance for her.

*Grant James Limited's evidence*

[28] Ms Greig's written evidence on the 3 April 2017 call is that she told Ms Villavicencio not to worry about rushing back to work as it was a quieter patch. She also asked Ms Villavicencio to inform Pinewood when she had medical clearance from ACC to return to work.

[29] In oral evidence Ms Greig explained this further. First, she outlined that in her role as Operations Manager at Pinewood she would not normally be directly involved in staff issues, particularly recruitment and termination. Normally this would be Ms Kubieziel's responsibility. In this case, she called Ms Villavicencio because she had received a note telling her that Ms Villavicencio wanted to speak to her.

[30] Second, she said that she was aware that Ms Villavicencio had been into Pinewood twice and had asked her to call her. As a result, she thought Ms Villavicencio might be worried about when she would be able to return to work and worried, generally, about keeping her job. So she wanted to reassure Ms Villavicencio and make her feel comfortable about taking time off and making sure she was fully recovered before she returned to work.

[31] Third, Ms Greig accepted she did say it was a quieter period and Pinewood had enough staff to cover the work. She says this was true and the booking sheets for that period show that. But this was not a reason for dismissing Ms Villavicencio. Pinewood would have work for Ms Villavicencio in the future because the bookings would increase again or because housekeeping staff would leave, as there was always a high turnover of housekeeping staff.

[32] Ms Kubieziel's evidence was consistent with Ms Greig in terms of her role and her responsibility for housekeeping staff.

[33] Ms Kubieziel also explained how the rosters and the Pinewood Facebook group operated as she was responsible for creating the rosters, posting them on Facebook and controlling access to them on Facebook:

- (a) Ms Kubieziel created the rosters by her using a template on her computer. Rosters were created on a weekly basis, in advance of the week in which shifts were being allocated. This could be anything up to three weeks in advance, but was often less depending on circumstances. The roster might also be changed, prior to the commencement of the week of work, as circumstances required this.
- (b) The template was used to create a “master housekeeping roster” for the week. This master roster would include all housekeeping employees employed by Pinewood regardless of whether they were working that week or not. If employees were not working the week of the roster there would be an explanation for their absence noted on the roster.
- (c) A redacted version of this roster, a staff roster, was posted to the Pinewood Facebook page. The staff roster would have employees removed from it who were away from work for a long period of time. These employees were also removed from the Pinewood Facebook group whilst they were away from work. This was done because employees who were absent for these longer periods of time did not need to be included in the rosters or have access to information about others when they were not there and also other employees did not need to know why an employee might be away for a longer period of time.

[34] Looking at the rosters for the period in question, the rosters follow a pattern that appears consistent with the information that Ms Kubieziel had about Ms Villavicencio’s absence when she was creating the roster:

- (a) The master roster and the staff roster for the week commencing 6 March 2017 had Ms Villavicencio off all week with a note stating “sick until 15/3”. This matches the information Ms Kubieziel had from the first ACC medical certificate received by Pinewood shortly after 1 March 2017.
- (b) The master roster and the staff roster for the week commencing 13 March 2017 was the same.
- (c) The master roster and staff roster for the week commencing 20 March 2017 had Ms Villavicencio off all week with a note stating “sick until 15/3?”. This is also consistent with the information that Ms Kubieziel had at the time the roster was created – it was only on 18 March 2017 Ms Kubieziel acknowledged Ms Villavicencio’s email stating that she was off work until 29 April 2017 and by this time the rosters would have been finalised and posted on the Pinewood Facebook page.
- (d) The master roster and staff roster for the week commencing 29 March 2017 had Ms Villavicencio off all week with a note stating “sick until 29/3”. This roster is inconsistent with what Ms Kubieziel knew from 18 March 2017, when she had the email from Ms Villavicencio stating that she was off work until 29 April 2017. I cannot reconcile this. It may be that the roster was done before 18 March 2017, or it may be that Ms Kubieziel overlooked the email when creating the roster, but either way Ms Kubieziel simply put a placeholder date in. Alternatively, she may have been confused at the time as to whether Ms Villavicencio’s email meant she might be back on 29 March 2017 if her doctor assessed her as fit to return to work.
- (e) The master roster and staff roster for the week commencing 3 April 2017 had Ms Villavicencio off all week with a note stating “sick until 29/4”. This is consistent with the information that Ms Kubieziel had at the time the roster

was created, from Ms Villavicencio's email stating that she was off work until 29 April 2017.

- (f) The master roster for the week commencing 10 April 2017 had Ms Villavicencio listed as being off all week with a note stating "until further notice/ACC". This is consistent with what Ms Kubieziel knew at the time as Ms Greig's evidence was she had told Ms Kubieziel of her conversation with Ms Villavicencio on 3 April 2017. The obvious point is that Ms Villavicencio is still on the master roster, which is consistent with her not being dismissed by Ms Greig.
- (g) The staff roster for the week commencing 10 April 2017 had Ms Villavicencio removed from it. Ms Villavicencio's access to the Pinewood Facebook page as part of the Pinewood housekeeping group was removed. This is also consistent with Ms Kubieziel's knowledge at the time and her evidence about how employees on longer-term absences were removed from the staff roster and the Facebook group.

[35] Ms Kubieziel also gave evidence about dismissing employees. She said that although she had not dismissed anyone whilst she worked at Pinewood, there was a documented process for this including letters to confirm dismissal. Also for any employee leaving, whether through dismissal or not, there was a process to formalise this, including requests being made for uniforms to be returned, ensuring final pays are made, and removing employees from the Pinewood system.

[36] Ms Kubieziel and Ms Greig both confirmed that none of these steps were taken for Ms Villavicencio. And, Ms Greig confirmed that Pinewood did not advise Immigration New Zealand that Ms Villavicencio had been dismissed as it would have done if it had dismissed her.

*Credibility*

[37] In order to resolve the conflicting evidence I must decide whose evidence I prefer and this necessarily involves assessing credibility.

[38] I have considered the factors that may be relevant to the assessment of credibility as discussed in a decision of Judge Harding in the District Court in *R v Biddle*<sup>1</sup> that was cited with approval on appeal to the High Court<sup>2</sup>.

[39] In order to assess the credibility of the witnesses in this matter I have considered the following:

- (a) What each witness said – reviewing how the witnesses expressed their evidence both orally and in writing, considering what was said and how the witness said it.
- (b) Consistency – looking at whether the witness’s evidence was consistent throughout; and whether the witness’s evidence was consistent with other evidence such as contemporaneous documents or agreed or known facts.
- (c) Reliability – considering whether the witness appears reliable and was accurate in her perceptions and recall of events.
- (d) Concessions – looking at whether the witness made appropriate concessions.
- (e) How plausible – asking, overall, how reasonable, plausible or probable the witness’s evidence was; and whether the witness’s evidence hangs together and has a degree of truth or is persuasive.
- (f) Demeanour – considering the witness’s bearing, appearance and attitude but noting that this is limited as genuine witnesses may be mistaken in their

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<sup>1</sup> [2015] NZDC 8992

<sup>2</sup> *Biddle v R* [2015] NZHC 2673 at [21]

memory and those who do not tell the truth can still be convincing, i.e. looks can be deceiving.

[40] I have also considered the likelihood that witnesses might be mistaken and their recollection subject to confirmation bias or whether witnesses might, in fact, be lying under oath or affirmation.

*Analysis*

[41] I do accept that Ms Villavicencio thought Ms Greig had dismissed her. Her immediate reaction is consistent with this including the emails she wrote, the things she said and the telephone calls that she made. However, this does not prove that in fact Ms Greig did dismiss her.

[42] From the evidence that I read and heard, the documents that I have seen and the parties' submissions I consider the relevant factors going to credibility and assisting me with deciding what occurred on 3 April 2017 include:

- (a) Ms Villavicencio is a very pleasant individual but was very firm in her views and appears to be strong willed. She would not give up any ground on any issues, would cut people off in the investigation meeting and talk over people. She was persistent in her pursuit of this matter and described by counsel for Grant James Limited as having an intransigent attitude. She had a dogmatic uncompromising approach to this matter.
- (b) Ms Greig was also very pleasant but much more relaxed in her views. She had a somewhat lax and informal approach appearing more open and flexible.
- (c) Both witnesses' evidence about what they said on 3 April 2017 was consistent even in cross-examination. Ms Villavicencio did however use language to describe what Ms Greig said in the conversation, that sounded more like her choice of words and less like what Ms Greig would actually have said. So, for

example, Ms Villavicencio said that Ms Greig said that Pinewood no longer needed her “service”. It seems to me therefore that Ms Villavicencio’s evidence was more likely to be her recollection of what was said expressed in her words rather than what was actually said. And therefore is less persuasive of what was actually said.

- (d) The master rosters and the staff rosters are consistent with Ms Greig’s evidence about the telephone conversation, that is, they reflect that Ms Villavicencio had not been dismissed but would be off work on ACC for some unknown period of time.
- (e) Other witness evidence was consistent with Ms Greig’s account of the 3 April telephone call. For example, Ms Kubieziel’s evidence was that she was not told that Ms Villavicencio had been dismissed and this is confirmed by her actions in that she did not process Ms Villavicencio as a leaving employee nor did she remove her completely from her master rosters.
- (f) Ms Greig dismissing Ms Villavicencio is inconsistent with Pinewood’s prior attitude toward her. The evidence from Pinewood, which Ms Villavicencio accepted, was that it was very keen to employ her as she was experienced, Pinewood sponsored her for a work visa, Pinewood was prepared to wait for her to start after her visa was granted, Pinewood paid her more than its usual rate for a housekeeper, Pinewood were considering promoting her to an assistant supervisor role, and after her injury Pinewood paid Ms Villavicencio an additional two pays to assist her whilst she was not able to work and whilst ACC was being sorted out for her.
- (g) Ms Greig dismissing Ms Villavicencio is inconsistent with the evidence of how Pinewood deals with its employees.

[43] It seems more likely to me that Ms Villavicencio is mistaken in terms of what she heard in the telephone conversation on 3 April 2017 and then mistaken in her recollection of the call. On the one hand, her attitude and approach to this matter supports the view of someone who was wronged and feels strongly about this but on the other it went too far for me, appearing to be desperate and intransigent.

[44] Ms Villavicencio displayed classic signs of confirmation bias:

- (a) She sought only information that supported her views giving it great emphasis and placing disproportionate weight on it<sup>3</sup>;
- (b) She dismissed anything that was contrary as being irrelevant or false<sup>4</sup>;
- (c) She appeared to convince herself that her version of events or actions were right and she was not open to alternative scenarios<sup>5</sup> nor she would she make any relevant concessions; and
- (d) She had an overly strong view of what she believed she had been told.

[45] Ms Greig's evidence of what she said was consistent with her demeanour and attitude and consistent with her stated view of the circumstances and what she thought was concerning Ms Villavicencio. It had more credibility when compared to the contemporaneous documents, such as the rosters, and the general evidence of how Pinewood ran its operations particularly how it dealt with its staff and its attitude toward Ms Villavicencio who they saw

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<sup>3</sup> There were several examples of this in the documents Ms Villavicencio produced for the investigation meeting, which are not necessary to replicate, but I did find the disclosure of information pertaining to Thomas Woodhouse, who Ms Villavicencio alleged was dismissed in similar circumstances, particularly lacking.

<sup>4</sup> Again, there were several examples of this behaviour and it is not necessary to narrate all of them but one example in particular was Ms Villavicencio's failure to disclose that she reported her alleged dismissal to Immigration New Zealand as being a dismissal under a 90-day trial period. When cross examined on this Ms Villavicencio attempted to dismiss the relevance of this inconsistent statement by suggesting that Immigration New Zealand told her it wanted to deal with her dismissal on this basis as it might enable her to get a new work visa.

<sup>5</sup> The Thomas Woodhouse scenario was a good example of this – Ms Villavicencio would not accept that it was logical that Pinewood would ask him not to attend work when he was either in custody or on bail for alleged offending relating to an indecent act, rather she saw this as being analogous to her situation.

as a good employee with long-term potential. In short, Ms Greig was a credible witness and her version of events seemed likely and consistent – in the words of Judge Harding in *Biddle*, her evidence hung together and was compelling.

[46] And, there are three factors that are particularly pertinent to me:

- (a) First, Ms Greig's evidence is consistent with the rosters, particularly the master roster that Ms Greig would have had no influence or control over.
- (b) Second, there was no reason why Ms Greig would have decided to dismiss Ms Villavicencio on 3 April 2017, that version of events is inconsistent with everything Pinewood did to support Ms Villavicencio and how it operated generally.
- (c) Third, if Ms Greig did dismiss Ms Villavicencio then she must have been lying throughout this matter from the initial response to the grievance through to the evidence she gave under affirmation in my investigation meeting. Also, the other witnesses for Grant James Limited whose evidence supported Ms Greig's account must also have been lying and the documents that supported her account, in particular the rosters, must have been fraudulently created. There was nothing in my investigation meeting causing me to conclude this was correct for any of the witnesses or the documents<sup>6</sup>.

[47] I conclude that Ms Greig did not dismiss Ms Villavicencio.

[48] There is, however, one additional aspect to consider. It is clear from *New Zealand Cards Limited v Ramsay*<sup>7</sup> that where an employer becomes aware that an employee

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<sup>6</sup> In submissions, the advocate for Ms Villavicencio argued for the first time that, in fact, Ms Greig actually attempted to dismiss Ms Villavicencio under the 90-day trial period provision in her employment agreement. Then, when Pinewood discovered the 90-day trial period provision was not enforceable, it changed its position to state that Ms Greig had not dismissed Ms Villavicencio. There was no evidence to support this and it was, in my view, a contrived attempt to give credibility to Ms Villavicencio's case.

<sup>7</sup> [2012] NZEmpC 51.

misunderstood a communication to mean he/she was dismissed, contrary to the employer's intention, the employer cannot simply do nothing about this. In *Ramsay*, after referencing *Boobyer v Good Health Wanganui Limited*<sup>8</sup> Judge Couch says:

[51] If the mistake is about dismissal rather than resignation, the analogous scenario is this. Where the communication is equivocal, the employer learns that the employee has misunderstood it as a dismissal contrary to the employer's intention but does nothing within a reasonable time to correct the employee's false impression. In such a case the employer must suffer the adverse consequences of passively standing by and letting the employee think that a dismissal has taken place.

[49] Grant James Limited received the personal grievance letter on 5 May 2017. Ms Greig's evidence was that it was shocked by this as she had not dismissed Ms Villavicencio. Given the serious nature of the allegations and the threat of a claim, Grant James Limited sought legal advice. This process was protracted a little as the Greig family, who made up most of the management of Pinewood and Grant James Limited were on holiday in Thailand around this time. In the end Grant James Limited's solicitor spoke to Ms Villavicencio's representative on 17 May 2017.

[50] Given that it was not clear if Ms Villavicencio was fit to return to work at the time, that the grievance had been raised one month after the alleged dismissal, that the grievance was stated in formal terms with a threat of legal action that Grant James Limited thought should be responded to by its lawyer rather than directly and that the Greig family were on holiday, I find that the delay does not amount to doing "nothing within a reasonable time to correct the employee's false impression". The failure to respond immediately to correct Ms Villavicencio's misunderstanding of the 3 April 2017 does not amount to a dismissal.

[51] When Grant James Limited did respond, through its lawyer, it made it clear that Ms Villavicencio was mistaken, there was no dismissal and Ms Villavicencio's job was still available for her to return to once she had medical clearance to resume work.

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<sup>8</sup> WEC 3/94, 24 February 1994.

[52] Ms Villavicencio rejected Grant James Limited's response and in doing so she effectively resigned from her employment.

[53] So, I conclude that Ms Villavicencio has failed to prove that she was dismissed and consequently there cannot be an unjustified dismissal.

### **Costs**

[54] Grant James Limited has previously voiced concerns over its ability to recoup any costs I might award it if it was successful in defending Ms Villavicencio's claim. Its reasons for this are twofold. First, Ms Villavicencio's evidence at the first day of my investigation meeting showed she is impecunious, having sold assets to fund her living costs here in New Zealand. And, second, Ms Villavicencio is likely to leave New Zealand shortly after this matter is determined and it will be difficult to track her down and enforce any costs award against her.

[55] For these reasons Grant James Limited sought an order for security for costs against Ms Villavicencio. I declined that application<sup>9</sup>. I directed the parties to make submissions on costs at the conclusion of the investigation meeting so that I could determine costs at the same time as the grievance claim. That way, if I awarded Grant James Limited any costs it could seek enforcement quickly and that may deal with some of its concerns.

[56] In the end, I received cost submission in writing and did not review them until I had completed the substantive part of this determination. Having reviewed those submissions I turn to deal with costs now.

[57] As Grant James Limited has been successful in defending Ms Villavicencio's claim, it is entitled to a contribution to its costs. My starting point is to apply the daily tariff and then

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<sup>9</sup> *Yamilesi Villavicencio v Grant James Limited* [2017] NZERA Christchurch 196

consider whether this should be adjusted based on the principles in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*<sup>10</sup>, and *Davide Fagotti v. Acme & Co Ltd*<sup>11</sup>.

[58] My investigation of this matter took two days so the starting point is \$4,500.00 for the first day and \$3,500.00 for the second day – these being the applicable daily tariff rates.

[59] I am prepared to raise the daily tariff because there was an offer of settlement that, obviously, Ms Villavicencio did not better in this determination. In *Davide Fagotti* the Employment Court said that an uplift of \$1,000.00 to the daily tariff where a party did not beat an offer of settlement, was appropriate. Based on this I will raise the daily tariff by \$1,000.00 per day, being a total increase of \$2,000.00.

[60] I am also prepared to raise the daily tariff because of Ms Villavicencio's conduct of this matter:

- (a) There were a number of documents disclosed directly to me part way through the first day of the investigation meeting which caused additional work to be undertaken for the respondent. Those documents were, to some extent incomplete and if all the information had been provided there may not have been a need to consider the documents as fully as I did and Grant James Limited had to.
- (b) Some of the other documents and evidence provided by Ms Villavicencio were incomplete in parts, requiring further work by counsel for Grant James Limited and additional cross-examination.
- (c) The advocate for Ms Villavicencio advanced a new argument in his submission, relating to a dismissal under a 90-day trial period, requiring further work by counsel for Grant James Limited after the second day of the investigation meeting.

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<sup>10</sup> [2005] 1 ERNZ 808

<sup>11</sup> [2015] NZEmpC 135

[61] In my view this conduct warrants an increase in the daily tariff of \$500.00 per day, being a total increase of \$1,000.00.

[62] These two increases to the daily tariff need to be offset by one other relevant factor. Grant James Limited applied for security for costs and was unsuccessful in that. I assess the reduction that should be made, reflecting essentially the costs incurred by Ms Villavicencio on this application to be \$1,000.00.

[63] So in total Ms Villavicencio must pay \$10,000.00 as a contribution to Grant James Limited's costs in this matter.

**Determination**

[64] I decline Yamilesi Villavicencio's claim for a personal grievance; Grant James Limited did not dismiss Ms Villavicencio.

[65] Ms Villavicencio must pay \$10,000.00 as a contribution to Grant James Limited's costs in this matter.

Peter van Keulen  
Member of the Employment Relations Authority