

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 13A/10  
5162731

BETWEEN                      Wagg & Harcombe Limited  
Applicant

AND                              Kathryn Pike  
Respondent

Member of Authority:      Denis Asher

Representatives:            Adam Parker for the Company  
Francis Minehan for Ms Pike

Submissions received:      By 24 March 2010

Determination:              1 April 2010

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     In my determination dated 1 February 2010 (WA 13/10) I found against the applicant's (the Company's) claim that Ms Pike has acted in bad faith and had breached her employment agreement. I dismissed the Company's claim to recover financial loss against the respondent.

[2]     Costs were reserved.

## **Ms Pike's Costs Submissions Summarised**

[3] Total legal aid granted Ms Pike, it is anticipated, will amount to \$3,098.27.

[4] Actual and reasonable costs for the respondent and her witnesses (fellow employees facing a similar claim), including car mileage and parking fees, totalled \$300.

[5] Lost wages and compensation for taking annual leave for Ms Pike and one of her witnesses totalled \$240.

[6] The respondent's costs claim relies on *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.

[7] The further half day hearing initiated by the Company and held on 10 December 2009 was totally unnecessarily, a view articulated at the end of that hearing.

[8] Further costs are also sought on the grounds that the allegation of fraudulent intent raised against Ms Pike, and the resulting application and hearing were totally unjustified on the facts.

[9] Ms Pike is required to repay legal aid to the Legal Services Authority at the rate of \$20 per week. It is unjust to load what is in effect a loan on an innocent party who is in receipt of modest weekly wages.

[10] Taking account of actual and real costs and the principles set out in *Da Cruz* (above) costs of \$4,500 are sought.

## **The Company's Position Summarised**

[11] The Company says that the facts in the *Da Cruz* case are distinguishable from this matter and submits that this case rests within the usual tariff based approach by the Authority.

[12] The Company also submits that the unique circumstances of this case open to the Authority the opportunity to let costs lie where they fall.

[13] The further half day's hearing was required as a result of claim made by Ms Pike. There was therefore no option but to call additional evidence; their availability was beyond the Company's control.

[14] There is no basis for claiming actual costs for Ms Pike and her witnesses, including loss of wages.

[15] Ms Pike was on legal aid.

[16] Having regard to the above costs should lie where they fall.

### **Discussion and Findings**

[17] The Authority's discretion with which to award costs is now well settled and typically follows the event: *Da Cruz* (above). I can see no reason in this case to deviate from that approach.

[18] I accept the Company's submissions that actual costs are not normally awarded and can see no reason in this instance to deviate from that approach.

[19] Having succeeded in her defence I am satisfied it is inequitable that Ms Pike should carry the burden of legal aid necessarily incurred to ensure that success. In all the circumstances, including the duration of the investigation (one and a half days) I am satisfied the Company should reimburse Ms Pike her legal aid.

### **Determination**

[20] The Company is to pay Ms Pike's actual legal aid costs of \$3,098.27.

**Denis Asher**

**Member of the Employment Relations Authority**

