

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 71A/10
5150595

BETWEEN NICOLE WARD
 Applicant

A N D SOUTH PACIFIC MEATS
 LIMITED
 Respondent

Member of Authority: Philip Cheyne

Representatives: Mark Henderson, Counsel for Applicant
 Graeme Malone, Counsel for Respondent

Submissions Received: 13 April 2010 from Applicant
 4 May 2010 from Respondent

Determination: 29 June 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 17 March 2010 I rejected Ms Ward's claim of constructive dismissal but upheld her claim of unjustifiable disadvantage and awarded a modest amount of compensation. Costs were reserved.

[2] I have now received submissions from both parties about costs. This determination resolves the disputed question of costs.

[3] I am referred to *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808. In reliance on that authority counsel for the applicant argues that Ms Ward as the successful party is entitled to an award of costs. I am told that Ms Ward is legally aided and I have been given a copy of the relevant invoices which show that her legal costs were a little over \$3,000. I am asked to award \$2,400 in costs.

[4] Counsel for the respondent submits that the applicant succeeded on only one minor part of her entire case. Counsel submits that about 5/6th of the time spent in

the investigation meeting dealt with matters related to the unsuccessful part of the applicant's case so that the respondent rather than the applicant could be regarded as the successful party for the purposes of costs.

[5] I do not accept that the matter can be assessed in the simple arithmetical way argued for by counsel. The evidence which resulted in the finding of unjustified disadvantage also formed part of the background to the reasons for Ms Ward's resignation. In addition there was general evidence about the employment relevant as context for both parts of her claim. In other words much of the evidence would have been required even for a claim limited to the point on which Ms Ward succeeded. Although Ms Ward's success fell well short of her claim I find that she should be regarded as the successful party for the purposes of assessing costs.

[6] The matter took less than half a day. A costs award of somewhat less than half a day at the ordinary tariff is called for. I order South Pacific Meats Ltd to pay Ms Ward \$1,000 by way of costs.

Philip Cheyne
Member of the Employment Relations Authority