

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA199A/08
5083821

BETWEEN TINA WELLS
Applicant

AND RESCARE MANAGEMENT
LIMITED
Respondent

Member of Authority: Alastair Dumbleton

Submissions Received 18 and 29 July 2008

Determination: 25 November 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] Ms Tina Wells has applied for an award of costs following the determination given by the Authority on 4 June 2008 under AA 199/08.

[2] In its determination, for the reasons given the Authority upheld Ms Wells' claim of personal grievance by finding that she had been unjustifiably dismissed by Rescare Management Limited her employer. She was found not to have contributed to the situation that gave rise to her grievance.

[3] Further, the Authority found that Rescare had breached the employment agreement through the way it had suspended her from the employment prior to dismissal.

[4] The Authority also found that the employer had breached its duty of good faith with regard to participation in mediation earlier agreed to but later rejected by the company. There was also found to be a breach of good faith by Rescare in attempting to mislead Ms Wells about the dismissal.

[5] Ms Wells was awarded the personal grievance remedies of reimbursement for lost wages and compensation for hurt feelings and distress. A penalty was also ordered to be paid by Rescare, with part of it to go to Ms Wells.

[6] As the parties were unable to resolve the issue of costs themselves, an application was made to the Authority on behalf of Ms Wells.

[7] In submissions Mr France and Mr Tremewan have both referred to the leading Employment Court decision on costs in the Authority, *PBO Security Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808.

[8] This was an investigation which, although involving multiple claims for remedies, was not factually complicated and the detail was only in the law. The investigation meeting itself was of normal length at about a day and was conducted in an efficient manner by the parties and their representatives.

[9] For Ms Wells a costs award of \$9,106.50 is sought. That is the total of costs incurred by her and is broken down to an amount of \$5,832 invoiced by Auckland Advocacy Limited for services up to and including the mediation arranged for the day before the dismissal occurred, and for post-dismissal work by Mr France an amount of \$3,274.50 for commencing the claim, preparing the investigation in the Authority and presenting evidence and submissions at the meeting on 14 December 2007.

[10] Mr Tremewan for Rescare has pointed out that the fees charged by Auckland Advocacy Limited, as well as being for services rendered prior to the dismissal, are not supported with any itemised account describing the particular work carried out.

[11] Mr Tremewan submits, and the Authority agrees, that those particular costs and expenses ought to be set aside on the basis that they do not relate directly to the investigation or the investigation meeting and necessary preparation for those, and there is also no description of the work to which they do relate. The costs are also nearly double the amount billed by Mr France for his work which covered the entire investigation.

[12] Mr Tremewan accepts that the sum billed by Mr France to the Legal Services Agency on behalf of Ms Wells is reasonable for the work carried out by counsel once he became instructed.

[13] Mr Tremewan submits that if the Authority is of a mind to award costs they should be in the range of \$1,000 to \$2,000 in the circumstances. He particularly emphasises the principle confirmed in *Da Cruz*, and acknowledged by Mr France, that costs are intended to compensate rather than punish.

[14] There is nothing about the conduct of the investigation and the investigation meeting itself on the part of the employer Rescare that justifies any higher award of costs than might otherwise be made. The conduct of the employer surrounding the dismissal has been addressed in the level of monetary remedies that were awarded to Ms Wells. Those remedies included a penalty for breach of the employment agreement. Other post-dismissal conduct of Rescare in harassing Ms Wells was reflected in the amount of compensation awarded to her.

[15] I note that when the *PBO* decision was issued over two years ago, research had shown that the majority of costs awards for a single day investigation meeting were in the range of \$2,000 to \$2,500.

[16] In the circumstances, I find that a reasonable contribution to the actual costs of the investigation is \$2,250.

[17] Rescare Management Limited is therefore ordered to pay \$2,250 to Ms Wells as a reasonable contribution to actual legal costs incurred. The order is made pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

A Dumbleton
Member of the Employment Relations Authority