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Wyatt v Whangarei Boys' High School (Auckland) [2007] NZERA 89 (30 May 2007)

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 85A/07 503 7596

BETWEEN

AND

Sharon Patricia Wyatt Applicant

Whangarei Boys' High School Respondent

Member of Authority: Representatives:

Submissions received: Determination:

Ken Raureti

Barry Nalder for Applicant Katharina Friedli for Respondent

11 April 2007 from Applicant Nil received from Respondent

30 May 2007

COSTS DETERMINATION OF THE AUTHORITY

[1] A determination of this matter was issued on 21 March 2007. Costs were reserved and the parties were requested to attempt to resolve the issue between them. They have been unable to resolve the matter. Mr Nalder filed submissions with the Authority, indicating that Mrs Wyatt's total costs were \$3,146.00 which is made up of two days preparation and attendance at the investigation meeting. The total costs include preparation of the statement of problem, the filing fee, and preparation of her brief of evidence. Mr Nalder indicates in his submission that Whangarei Boys' High School intend to challenge the determination of the Authority, and they do not agree to make a contribution towards Mrs Wyatt's costs. I note that Mr Nalder's submissions were copied to Webb Ross Lawyers.

[2] Whangarei Boys' High School has challenged the Authority's determination. The election by the respondent to challenge a determination of the Authority does not operate as a stay of proceedings on that determination. The determination set out a timetable for filing of submissions in the event of costs not being resolved. Whangarei Boys' High School has not made any submissions.

[3] The Authority's discretion to award costs is set out in Clause 15 of the Second Schedule of the [Employment Relations Act 2000](#). The principles guiding the Authorities discretion are set out in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*

- • There is a discretion as to whether costs should be awarded and what amount;
- • The discretion is to be exercised in accordance with principle;
 - • The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority;
- • Equity and good conscience is to be considered on a case by case basis;

- • Costs are not to be used as a punishment or as an expression of disapproval of an unsuccessful party's conduct although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award;
- • It is open to the Authority to consider whether all or any of the parties costs were unnecessary or unreasonable;
- • That costs generally follow the event;
- • That without prejudice offers can be taken into account;
- • That awards will be modest;
- • That frequently costs are judged against a notional daily rate;
 - • The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[4] Mrs Wyatt succeeded in her claim; she is entitled to a contribution to her costs. Costs awards in the Authority are modest. In exercising the Authority's discretion to award costs, Whangarei Boys' High School is ordered to pay Mrs Wyatt \$1,500.00 as a contribution towards the costs she has incurred.

Ken Raureti

Member of the Employment Relations Authority

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