

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 3A/10
5272415

BETWEEN MICHELLE MORGAN
Applicant

AND THRU NOW LIMITED trading
as LONE STAR CAFÉ AND
BAR
Respondent

Member of Authority: Philip Cheyne

Representatives: Jon Beck and Joanna Rolfe, Counsel for Applicant
Jonny Sanders, Advocate for Respondent

Submissions Received: 12 & 26 February 2010 from the Applicant
24 February and 4 March 2010 from the Respondent

Determination: 10 March 2010

DETERMINATION OF THE AUTHORITY

[1] In a determination dated 13 January 2010 I upheld Ms Morgan's personal grievance and awarded her compensation for lost remuneration and distress. Costs were reserved. I now have memoranda and letters from both sides so this determination resolves the disputed question of costs.

[2] It does not seem to be in dispute that Ms Morgan is entitled to an award of costs on the basis that she succeeded with her personal grievance claim. The present dispute is about the appropriate level of costs. For the respondent it is said that an award of \$1,000.00 would be appropriate while the claim is for \$2,000.00 in costs.

[3] A point for the respondent is that it would be unjust for an award of costs to exceed the value of the remedies recovered. There is no such principle. Ms Morgan recovered modest sums in remedies because her lost remuneration attributable to the grievance covered less than a 3 week period and there was very little evidence of distress. She is entitled to have costs assessed in accordance with *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808 despite her modest recovery.

[4] Ms Morgan was legally aided. The respondent makes the point that she may apply for her legal aid grant to be written off rather than repaid out of the proceeds of her awards. That is a matter for the appropriate authority and the possibility at this point is too remote for me to take into account.

[5] A further point for the respondent is that counsel for the applicant has not provided any details of the legal costs, such as invoices. However, I am told that the costs are \$3,415.00 including a grant of 6 hours for mediation. There is no reason to doubt that information. The Authority does not usually take account of mediation costs at this stage and I see no reason to depart from that approach here. The respondent questions whether the costs incurred were reasonable because the matter was not complex, it took less than one day and there was no need for the applicant to be represented by two counsel. On the last point I am told, and I accept, that Ms Rolfe's time has not been included in the costs incurred. That leaves Ms Morgan with legal costs of \$3,415.00 for mediation and an Authority investigation meeting to deal with a case where there was a substantial amount of factual disagreement but no legal complexity. Such costs are well within the bounds of being reasonable. It is unnecessary to inquire into the details of the costs any further.

[6] Counsel for the applicant has provided a copy of a *Calderbank* offer made by the applicant sometime prior to 16 September 2009. Generally, *Calderbank* offers are relevant when made by a respondent at a level equal to or more than an applicant eventually recovers by proceeding with the litigation. Such an offer can entitle the otherwise unsuccessful respondent to costs. That is not this situation so the offer from the applicant is irrelevant.

[7] I accept counsel's point about *Chief Executive of Department of Corrections v Tawhiwhirangi* [2008] ERNZ 73 indicating that \$3,000.00 per day is a fair starting point for assessing costs on a daily tariff basis. Against that the claim of \$2,000.00 seems appropriate in light of the lack of legal complexity and a meeting that lasted less than a full day. Accordingly I order the respondent to pay the applicant \$2,000.00 in costs.

P Cheyne
Member of the Employment Relations Authority