

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 405
5327599

BETWEEN

JOSEPHINE HAURARO
Applicant

AND

D & J GRINDLEY
SUPERMARKET LIMITED
T/A RIVERSLEA MALL
SUPERVALUE
Respondent

Member of Authority: Robin Arthur

Representatives: Stan Austin for Applicant
Mike Kyne for Respondent

Submissions: 6 September 2011 from the Applicant
16 September 2011 from the Respondent

Determination: 19 September 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination [2011] NZERA Auckland 350 the Authority found D & J Grindley Supermarket Limited (DJGSL) unjustifiably disadvantaged Josie Hauraro in how it dealt with her resignation and the circumstances leading to her giving notice. To settle that grievance Mrs Hauraro was awarded \$6000 in compensation, reduced by one third for her contribution to the situation.

[2] Mrs Hauraro was unsuccessful in her claim that her resignation was a constructive dismissal.

[3] The parties were encouraged to resolve any issue of costs themselves but were unable to do so. Costs have now been determined after considering memoranda from the representatives.

[4] I had given a preliminary indication that costs would likely be determined on the basis of a notional daily rate, subject to the application of principles discussed in *PBO v Da Cruz* [2005] ERNZ 808 and what the parties' memoranda might say.

[5] Mrs Hauraro sought an order of costs based on the notional daily rate applied to the one day required for the Authority investigation meeting and two days preparation time, that is a total of \$9000 as a reasonable contribution to what were said to be her total actual costs (post mediation) exceeding \$11,500. The claim for preparation time was based on a 1:2 ratio for investigation and preparation time adopted in one case where the Employment Court was required to determine costs for an Authority investigation as well as a Court hearing.¹ She also submitted such an order was appropriate given the complex nature of her claim for constructive dismissal.

[6] DJGSL sought an award of costs in its favour on the basis that Mrs Hauraro was unsuccessful in her claim of constructive dismissal, or, in the alternative, that costs lie where they fall. It was said to have incurred costs of more than \$15,000 in responding to Mrs Hauraro's claim.

[7] I do not accept what has been described as the "hybrid approach", taken by the Court in the *Tawhiwhirangi* case referred to earlier, applies to the particular circumstances of the present matter or is mandatory in the exercising the statutory discretion to award costs.² Rather I am satisfied the usual tariff is the appropriate starting point in this case, adjusted upwards or downwards on the basis of the principles endorsed by a full bench of the Court in *Da Cruz*.

[8] Mrs Hauraro submitted, through her representative, that the nature of her case was "more complex than the norm". However her evidence comprised only witness statements from herself and her husband and I do not accept the preparation necessary was so extensive or complex that any increase on the tariff was required for that reason.

¹ *Chief Executive of the Department of Corrections v Tawhiwhirangi (No 2)* [2008] ERNZ 73.

² *NZ Dairy Workers Union v Fonterra* (ERA, AA240A, 14 September 2010, Member Larmer).

[9] Costs generally follow the event, which in this case was Mrs Hauraro successfully establishing she had a personal grievance. Contrary to DJGSL's submission I do not accept her grievance succeeded due to a "minor procedural mistake" by the company director. The reasons for that were set out at some length in paragraphs [53] to [60] of the determination.

[10] However I do accept – applying another of the principles discussed in *Da Cruz* – that the nature of the case may require some adjustment to the tariff. In this particular matter Mrs Hauraro was not successful in establishing her main claim of constructive dismissal, the matter on which most of the evidence of eight witnesses interviewed in the investigation concentrated. In that respect the "event" favoured DJGSL but not, in my determination of what is fit or just in the overall circumstances, to the extent that would require an order of costs in its favour or an order that costs lie where they fall. Rather what would otherwise be an award to Mrs Hauraro of \$3000 for her costs should be adjusted downwards to \$2000.

[11] DJGSL is ordered to pay Mrs Hauraro \$2000 as a reasonable and modest contribution to her costs in bringing that part of her personal grievance application in which she succeeded.

[12] Mrs Hauraro requested a certificate of determination for the award made in the earlier determination and the order for costs made here. A certificate is to be issued with this determination.

Robin Arthur
Member of the Employment Relations Authority