

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2012] NZERA Wellington 114
5366186

BETWEEN

SYLVIA BEACHAM
Applicant

A N D

CHIEF EXECUTIVE OF THE
MINISTRY OF SOCIAL
DEVELOPMENT
Respondent

Member of Authority: P R Stapp

Representatives: Susan Hornsby-Geluk, Counsel for Applicant
Robert Foitzik, Counsel for Respondent

Submissions By: 3 August 2012, 27 and 13 July 2012

Date of Determination: 28 September 2012

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This is an application for costs from the applicant. The applicant's claim is based on her actual costs and that the Authority should award her reasonable costs (plus GST) to allow her to retain a modest portion of the compensation awarded by the Authority.

[2] The respondent opposes the amount sought by the applicant as being excessive and unreasonable.

The issue

[3] How much is the applicant entitled to for costs?

Background

[4] The Authority reserved the matter of costs in a determination dated 5 June 2012 [2012] NZERA Wellington 62. I found that Ms Beacham had a personal grievance against her employer the Ministry of Social Development and awarded her lost wages and compensation. Ms Beacham was seeking reinstatement, but this was not granted.

Determination

[5] The substantive hearing of the matter took two days. A further half day was set down for the parties' representatives to provide submissions.

[6] At first the application lodged in the Authority involved an interim application supported by an affidavit and an undertaking in respect of damages while Ms Beacham was still employed. An interim investigation meeting was set down for 17 January 2012, but was not subsequently needed. The parties were required to attend mediation. A full investigation meeting followed to deal with Ms Beacham's dismissal.

[7] The principles for costs awards have been outlined previously in *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808. The main principle applying to costs relates to whether or not the costs have been reasonably incurred to assess a reasonable contribution. The Authority applies a notional tariff of \$3,500 as a starting point.

[8] One of the difficulties in this case is that the costs for the applicant I am informed have been \$30,951.72 (GST inclusive). The applicant is seeking \$15,000 plus GST. This sum is clearly outside the standard daily notional tariff applied by the Authority for the two and a half day hearing. On the basis of the notional tariff the standard award would be approximately \$8,750.

[9] Therefore in making my assessment of this matter I note the following influences:

- i. That it does not much matter where the costs were incurred in the preliminary matter and/or the full matter. In this case Ms Beacham was represented in preliminary proceedings that were filed in the Authority and these went on to involve a full investigation meeting, by

which time a decision had been made to dismiss Ms Beacham. The work associated with the preliminary matter would have overlapped with the work associated with the full substantive matter. In this regard I have considered the overlapping use of affidavits/briefs/statements and documents and that the parties did add to these for the purposes of the full investigation meeting. It is not unusual and nor is it unreasonable.

- ii. That the parties did attempt mediation once the matter was filed in the Authority. Indeed the Ministry did agree to continue Ms Beacham's pay through until the date of the investigation meeting.
- iii. That all relevant documents were produced for the Authority, and although the Ministry's documentation was untidy the presentation did not cause any unreasonable delays. This is because the witnesses were able to sift out the relevant documents as they were required to refer to them during the investigation meeting. Also, the respondent's documents as presented could not have possibly put the applicant to additional expenses, since all the documents reasonably expected for use at the investigation meeting were available and or should have been reasonably identified. The documents were identified in any event by the witnesses' statements, the statement of problem, and the statement in reply. Also, once the witnesses got used to where documents were located (although with help sometimes) they were able to quickly find them. That situation is not unusual in an investigation meeting and did not unnecessarily add to the time. I certainly would not hold the nature of the presentation of the documents against the respondent.
- iv. The respondent did not engage external counsel throughout the matter. It was represented by internal counsel and that is an approach that should be encouraged to save costs.
- v. The applicant was successful in her claim for unjustified dismissal. The remedies are a different matter. In this regard I am conscious that the remedies may well be eroded by the costs incurred. In that regard parties should have their eyes wide open when making decisions about

their claims and the likely remedies since the Employment Relations Authority applies a tariff, which should be known, especially when experienced Counsel are involved. The tariff has been well known for some considerable time.

[10] It is my conclusion there was nothing unusual or any different about this case to depart from the notional daily tariff approach. Also, taking in to account all the above influences the tariff should remain at \$3,500 per day.

[11] On the basis of the notional tariff I therefore award the applicant for the time attendances and preparation \$8,750 contribution towards reasonable costs. In addition the applicant is entitled to the filing fee of \$71.56.

Order of the Authority

[12] The Chief Executive of the Ministry of Social Development is required to pay the applicant Ms Beacham \$8,750 costs and the \$71.56 filing fee.

P R Stapp
Member of the Employment Relations Authority