

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2012] NZERA Christchurch 171  
5308294

BETWEEN                      MARIE-ANNE DALLIMORE  
   Applicant  
  
A N D                              WHOLESALE                      BUYING  
   LIMITED  
   Respondent

Member of Authority:        Helen Doyle  
  
Representatives:              Gerald Nation/Sarah Waggott, Counsel for Applicant  
   Penny Shaw, Counsel for Respondent  
  
Submissions Received:        2 July 2012 for Applicant  
   23 July 2012 for Respondent  
  
Date of Determination:        15 August 2012

---

**COSTS DETERMINATION OF THE AUTHORITY**

---

[1]     In a determination dated 1 June 2012 the Authority found that the applicant had a personal grievance and made orders for compensation and lost wages. The issue of costs was reserved. The Authority has now received submissions on behalf of the applicant and the respondent.

[2]     The Authority member determining this matter is not the member who heard the substantive matter. I have read the determination carefully together with the submissions.

**The applicant's submissions**

[3]     The applicant refers to the leading judgment on costs in the Authority from the Full Court of the Employment Court in *PBO Limited (formerly Rush Security Limited) v de Cruz* [2005] ERNZ 808. The applicant submits that the two personal grievances

of unjustified dismissal and disadvantage arose out of the same facts and were intricately linked in terms of preparation and hearing time and it was not a case where costs could be separated notwithstanding only the unjustified action grievance was made out. The applicant submits that there were two without prejudice offers made prior to lodging the personal grievance claim with the Authority and both were to settle for less than the Authority awarded to the applicant. The applicant seeks an increase to costs that would normally have been awarded.

[4] The applicant was legally aided at the point of the Authority hearing and the total legal costs incurred prior to the hearing were \$4,002.12 including GST and disbursements and the legal aid grant covered an additional \$2,468.16. The applicant submits that taking the notional daily recovery rate of \$3,500 together with an allowance for reasonable offers to settle the personal grievance, an award of costs of \$5,000 is a reasonable and appropriate contribution.

#### **The respondent's submissions**

[5] The respondent accepts that costs should follow the event but does not accept that the unjustified dismissal and unjustified disadvantage claim rose out of the same facts and submits that at the hearing there was focus on whether or not the redundancy was a genuine one and it was found that it was. Ms Shaw submits that if the issue was simply whether the applicant should have been offered a new role then the briefs of evidence, questioning of witnesses, submissions and investigation meeting time would have been briefer. Ms Shaw submits that genuine attempts were entered into to resolve the matter but at the stage the offers were exchanged the applicant's case was that she had not been consulted with and that the restructuring was not genuine.

[6] Ms Shaw submits that without prejudice discussions took place on the basis of the applicant's case at that time which was not successful and in seeking costs she should not be able to rely on her success of the points she did not raise before the respondent. Ms Shaw further submits that the costs claimed are limited to the legal aid granted, \$2,468.16, and costs in respect of mediation should not be part of the award made. Ms Shaw further submits that \$2,468.16 should be reduced to take into account that the applicant was not altogether successful.

**Determination**

[7] Costs are often assessed in the Authority on the basis of a notional daily tariff now recognised as \$3500 per day. The applicant was successful in one of her personal grievance claims that she was unjustifiably disadvantaged in her employment. In paragraph [61] of the substantive determination there is reference to the claim arising from the same facts (as the unjustified dismissal grievance). I am not satisfied that the two personal grievances of unjustified dismissal and unjustified disadvantage in this case were completely separate and my assessment is that they were, as submitted by the applicant, reasonably intricately linked. I do accept that the applicant was not completely successful.

[8] It is not the practice of the Authority unless there are unusual or exceptional circumstances to make an award of costs with respect to mediation and the second invoice in the sum of \$1,638 would seem to relate mainly to mediation. I deduct that amount from actual costs. The invoice dated 31 May 2010 is in relation to preliminary attendances although some attendances clearly related to matters preparatory to litigation so I do not, as Ms Shaw submits I should, completely disregard those costs. That invoice including disbursements is \$2,574.00. The legal aid invoice in the sum of \$2,468.16 is clearly related to the Authority hearing itself.

[9] I think it fair to start therefore with the usual daily tariff of \$3500, although there were offers to settle I have taken Ms Shaw's submission into account and make no adjustment but make a reduction in the circumstances to \$3000 to reflect the circumstances as outlined above with respect to actual costs incurred and take into account that the applicant was not completely successful.

[10] I order Wholesale Buying Limited to pay to Marie-Anne Dallimore the sum of \$3,000 for costs.

Helen Doyle  
Member of the Employment Relations Authority