

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 426
5415923

BETWEEN

ANN RAWSON
Applicant

A N D

KIWIANA TRADING
COMPANY LIMITED T/A
CAMELOT ARMS MOTOR
LODGE
Respondent

Member of Authority: Rachel Larmer

Representatives: Debra Law, Counsel for Applicant
David Smyth, Counsel for Respondent

Investigation Meeting: On the papers

Submissions Received: 02 September 2013 from Applicant
09 September 2013 from Respondent
09 September 2013 from Applicant

Date of Determination: 20 September 2013

COSTS DETERMINATION OF THE AUTHORITY

- A. Kiwiana Trading Company Limited trading as Camelot Arms Motor Lodge (Camelot Arms) is ordered to pay Mrs Rawson:**
- (a) \$10,000 towards her legal costs;**
 - (b) \$71.56 to reimburse her filing fee.**

Employment relationship problem

[1] In a substantive determination dated 30 August 2013¹ the Authority held that Camelot Arms unjustifiably dismissed Mrs Rawson. It was ordered to pay her remedies of \$14,687.50. Mrs Rawson's claim that Camelot Arms breached s.120 of the Employment Relations Act 2000 was successful but her unjustified disadvantage claim was not.

[2] The costs awarded must therefore reflect that Mrs Rawson succeeded on two of her three claims and that Camelot Arms successfully defended one of her claims.

[3] The parties were encouraged to resolve costs by agreement but failing that a timetable for costs to be dealt with by an exchange of memoranda was set. Agreement has not been reached so Mrs Rawson now seeks costs of \$12,000. Camelot Arms says it would be prepared to pay costs of \$7,000.

Mrs Rawson's submissions

[4] Mrs Rawson says her actual costs exceed \$18,000. She submits the Authority's notional daily tariff which is currently \$3,500 should be increased to \$6,000 to reflect:

- a. the increased costs she says she incurred unnecessarily as a result of the manner in which Camelot Arms' conducted its case;
- b. the length of hearing time (it was initially set down for one day but took two long days of hearing time);
- c. what she claims is the extensive time needed to prepare for the hearing and draft submissions addressing the material conflicts in the parties' evidence.

Camelot Arms' submissions

[5] Camelot Arms says the current notional daily tariff of \$3,500 should not be increased. It claims the length of hearing time required was due to Mrs Rawson's "*extensive and wide ranging collateral issues raised*" as well as what it intimated was inappropriate cross-examination.

¹ [2013] NZERA Auckland 389

[6] Camelot Arms says Mrs Rawson's actual costs are irrelevant. It also claims it made a reasonable settlement offer to Mrs Rawson on 2 July 2013 which was rejected.

Costs' principles

[7] The Authority's power to award costs arises from Schedule 2, clause 15 of the Employment Relations Act 2000 (the Act). This confers a wide discretion on the Authority to award costs, on a principled basis.

[8] The principles guiding the Authority's approach to costs are set out by the Full Court of the Employment Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*². Those principles are so well established that I do not need to restate them here.

[9] The general principle is that costs follow the event, and there is no reason to depart from that in this case. Accordingly, Mrs Rawson as the predominantly successful party is entitled to a contribution towards her actual legal costs.

[10] As indicated at paragraph [62] of the substantive determination³ I adopt the Authority's usual notional daily tariff based approach to costs. The current daily tariff is \$3,500 so because this matter involved two days of investigation meeting time the notional starting point for assessing costs is \$7,000.

[11] I must then consider whether there are any factors relating to the particular circumstances of this case which should result in an adjustment (either a reduction or increase) to the notional daily tariff.

Issues

[12] The following issues require determination:

- (a) Are there any factors which warrant adjusting the notional daily tariff?
- (b) What costs should Mrs Rawson be awarded?
- (c) What disbursements should Mrs Rawson be awarded?

² [2005] 1 ERNZ 808.

³ Ibid 1.

Are there any factors which warrant adjusting the notional daily tariff?

Are there any factors which warrant reducing the notional daily tariff/?

[13] It is unclear why Camelot Arms referred to the purported settlement offer. I do not accept that the purported “*settlement offer*” of 02 July is relevant to my assessment of costs because:

- a. It does not appear to be a settlement offer that could be accepted but was rather a suggestion by counsel to recommend to Camelot Arms that it pay Mrs Rawson \$8,000 to settle all claims;
- b. The \$8,000 suggested is significantly less than Mrs Rawson recovered so her rejection of that suggested figure is obviously reasonable;
- c. The suggestion was made after Mrs Rawson had filed her evidence and it did not seek to address the legal costs she had incurred up to that point.

[14] I do not accept Mr Smyth’s criticisms of how Mrs Rawson’s case was pursued. I do not accept Mrs Rawson raised extensive or wide ranging collateral issues – she merely responded to the wide ranging and extensive issues Camelot Arms had raised.

[15] I also reject the criticisms Mr Smyth made in his submissions about Ms Law’s cross examination. I consider it important that Ms Law on Mrs Rawson’s behalf properly explored the conflicts in the evidence by way of cross examination and I consider that occurred in an appropriate way.

[16] The parties did not identify any factors which would warrant reducing the notional starting tariff and I am not aware of any. I therefore decline to reduce the notional daily tariff.

Are there any factors which would warrant an increase to the notional daily tariff?

[17] I accept Mrs Rawson’s submission that Camelot Arms’ conduct substantially and unnecessarily increased Mrs Rawson’s costs. I rely on the following factors as warranting an increase to the notional starting tariff:

- (a) Camelot Arms raised spurious conflicts about virtually every detail of the evidence given by Mrs Rawson and her husband;
- (b) Camelot Arms produced irrelevant evidence about Mrs Rawson's character and previous actions;
- (c) All of Camelot Arms' witnesses presented entirely new evidence (which was not contained in their statements) for the first time during the Authority's investigation. Considerable additional time was devoted to dealing with all of the new matters;
- (d) Camelot Arms repeatedly failed, or was late, in complying with the Authority's directions despite it having had a number of indulgences extended to it;
- (e) Camelot Arms made inappropriate threats of criminal prosecution to deter Mrs Rawson from continuing with her grievance and she expended unnecessary time and resources attempting to obtain information about this unsubstantiated threat.

[18] I consider it appropriate to increase the notional daily tariff by \$1,500 to reflect the above factors.

[19] The two days of investigation meeting time required for this matter were both longer days than is usual so the notional daily tariff should be increased by \$500 to reflect that.

[20] I decline to increase the notional daily tariff because the parties filed written submissions. That is usual practice in many Authority investigations so I consider the notional daily tariff already allows for that.

[21] The notional daily tariff is therefore increased to \$5,500 (\$3,500 starting tariff + \$1,500 increase + \$500 increase) to reflect the particular circumstances of this case.

What costs should Mrs Rawson be awarded?

[22] Applying the increased daily tariff of \$5,500 to the two days of investigation meeting time results in costs of \$11,000. However that amount has to be reduced to reflect that Camelot Arms successfully defended Mrs Rawson's unjustified

disadvantage claim. I consider costs should be reduced by \$1,000 to reflect that success.

[23] Camelot Arms is therefore ordered to pay Mrs Rawson \$10,000⁴ towards her actual legal costs.

What disbursements should Mrs Rawson be awarded?

[24] Camelot Arms is ordered to reimburse Mrs Rawson \$71.56 for her filing fee.

Rachel Larmer
Member of the Employment Relations Authority

⁴ \$5,500 x 2 = \$11,000 - \$1,000 = \$10,000.