

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 358
5378127

BETWEEN JAYA KINGI, GRANT
HUGHES, KARINA KAU
KAU, HANNA AKURANGI,
ROBYN BOYNTON,
JANETTE HUNT, BARBARA
ALLISON, ANNE
O'HALLORAN, DAYLE
WILLIAMS
Applicants

AND BAY OF PLENTY DISTRICT
HEALTH BOARD
Respondent

Member of Authority: R A Monaghan

Representatives: S Austin, advocate for applicants
G Bingham, counsel for respondent
C Mayston for New Zealand Public Service Association,
as party given leave to be heard

Memoranda received: 28 July 2013 from applicants
27 June 2013 from respondent

Date: 13 August 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 10 June 2013 I found the appropriate mechanism for setting the applicants' rate of pay was through the job sizing procedure under the applicable collective employment agreement. I referred aspects of the sizing of the applicants' jobs to the respondent for reconsideration, and made additional orders relevant to the implementation of any increase in the rate of pay.

[2] Costs were reserved. The applicants and the respondent have filed memoranda on the matter.

[3] The respondent says it was the successful party. It seeks a contribution to costs in the sum of \$5,000 per day. Ms Bingham cited the principles in *PBO Limited v da Cruz*¹ and submitted that the daily rate should be increased to reflect the unsuccessful efforts to resolve the matter, the ‘non-specific’ nature of the applicants’ complaint, and the need to call 7 of its managers away from their duties in order to address the applicants’ claims.

[4] It is unclear what was meant by the reference to attempts to resolve the matter. The reference may concern the circumstances leading eventually to the forwarding to the job sizing committee of the parties’ dispute over the correct rate of pay, and the extensive exchanges which preceded that action. I regard that material as part of the historical development of the dispute.

[5] The matter was also covered in an offer from the applicants made without prejudice save as to costs and discussed in *Kingi & Ors v Bay of Plenty District Health Board*.² It is the outstanding matter referred to in that determination. The offer was dated 16 January 2012. It included a requirement that the respondent agree to remunerate the applicants at Grade E, and to backdate the increase to a maximum of 3 years. It was not accepted. However the matter has not yet been finalised.

[6] I am not assisted by the reference to the attempts to resolve the matter, and determine costs as set out below.

[7] The applicants say they were the successful parties. Despite citing *da Cruz*, Mr Austin sought a contribution to costs calculated as 66% x actual costs of \$10,427.63 = \$6,882.24. He also sought reimbursement of the filing fee.

Determination

[8] I am unable to say either party was successful.

[9] The job sizing procedure established under the cea should have been invoked in the first place. The applicants should not have declined to follow that path. There was a dispute about the detail of the applicants’ job description, but that could and should have been addressed as a preliminary matter if necessary and in the context of the job sizing procedure.

¹ [2005] 1 ERNZ 808

² [2012] NZERA Auckland 244

[10] Overall I found the applicants took a wrong approach in seeking first to secure the employer's agreement to a regrading to grade E, then to obtain an order from the Authority to that effect, without reference to the procedure in the cea. Most of the applicants' evidence and argument in the investigation meeting was concerned with what I have found to be that wrong approach.

[11] At the same time I found the respondent did not address the applicants' job descriptions appropriately in the job sizing committee, and have referred the matter to the committee for reconsideration.

[12] For these reasons I conclude that costs should lie where they fall. There will be no order.

R A Monaghan

Member of the Employment Relations Authority