

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2013] NZERA Wellington 30
5385572

BETWEEN

VANESSA PETROWSKI
Applicant

AND

CHIEF EXECUTIVE IN
RESPECT OF MINISTRY OF
BUSINESS, INNOVATION
AND EMPLOYMENT
(FORMERLY THE
DEPARTMENT OF LABOUR)
Respondent

Member of Authority: P R Stapp

Representatives: G J Ogilvie, Advocate/Employment Contract Services
Ltd, Wellington for Applicant
Alex Leulu, Counsel for Respondent

Submissions by: 24 January 2013

Date of Determination: 18 March 2013

COSTS DETERMINATION OF THE AUTHORITY

Application for costs

[1] This determination completes an application for costs reserved by the Authority in a determination [2012] NZERA Wellington 132, dated 26 October 2012. The applicant's representative has requested that the Authority make an order for a contribution of \$1,600 plus disbursements (filing fee) of \$71.56.

[2] The respondent has opposed any contribution to the applicant's costs. This is based first on there being no investigation meeting required. Second the matter was dealt with on the papers. Third the area of contention was always the same and that it is whether the applicant's total employment with her employer could be counted towards her eligibility for paid parental leave. Fourth the respondent relies on costs

being left to lie where they fall in another instance with an application involving the Ministry as a respondent that was brought before the Authority. The employment relationship problem is based on the interpretation of legislation and jurisdiction specifically under the Parental Leave and Employment Protection Act. The respondent has requested that apart from the application fee, costs should lie where they fall.

Determination

[3] It is my determination that the award of costs should be set at \$875 plus the \$71.56 filing fee.

[4] I have applied the principles for an award of costs by the Authority in *PBO Limited (formerly Rush Security Limited) v de Cruz* [2005] ERNZ 808 (EmpC). The rate requested by the applicant is much less than the daily tariff of \$3,500. There was no investigation meeting and the matter was determined on the papers. However, I do accept that the issues required submissions from both parties and that in the preparation of those submissions the applicant has incurred costs. The application for the contribution is much less than the actual costs for the work undertaken by the applicant's representative.

[5] My reason for the above sum is that a quarter of the notional daily tariff fairly represents a sum for preparation involving written submissions. There was nothing too complex about the matter, but I accept the applicant was entitled to get representation given the nature of the matter and that the background was untested. Most cases do not involve representatives for the applicant and I note that the MBIE generally leaves costs to lie where they fall if it is successful. However, each case falls on its own particulars and in this case the applicant is entitled to some reimbursement for costs and the fee.

Order of the Authority

[6] I order the Ministry of Business, Innovation and Employment (formerly the Department of Labour) to pay to Vanessa Petrowski \$875 costs and \$71.56 filing fee.

P R Stapp
Member of the Employment Relations Authority