

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 88
5515800

BETWEEN CAITLIN EAST
 Applicant

AND NOHANCY LIMITED T/A
 DEVONPORT 7 DAY
 PHARMACY
 Respondent

Member of Authority: Vicki Campbell

Representatives: Allan Silberstein for Applicant
 Asma Shousha for Respondent

Information received: 27 February & 23 March 2015 from Applicant
 12 March 2015 from Respondent

Determination: 24 March 2015

COSTS DETERMINATION OF THE AUTHORITY

A. Nohancy Limited trading as Devonport 7 Day Pharmacy is ordered to pay to Ms East costs of \$71.56 within 14 days of the date of this determination.

[1] In a determination dated 8 January 2015¹ I held that Nohancy Limited trading as Devonport 7 Day Pharmacy (Nohancy Limited) had breached its Record of Settlement and ordered it to pay to Ms East the amount of \$1,700.00.

[2] The question of costs was reserved and the parties were encouraged to reach agreement on this. The parties have been unable to reach any agreement and I have received memorandum from the parties with a request that the matter of costs be determined.

¹ [2015] NZERA Auckland 4.

[3] Mr Silberstein has provided a breakdown of time and costs. It is not clear on the papers whether this breakdown of time and costs is what was actually incurred by Ms East or if it is simply a statement of the time recorded by Mr Silberstein. In my determination I made it clear to the parties that they were expected to provide evidence to support any costs submissions.² No evidence that Ms East actually incurred the costs set out by Mr Silberstein has been provided.

[4] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event.

Determination of costs

[5] Under normal circumstances the Authority would apply a starting point of a notional daily tariff for quantifying costs. As this matter did not involve an investigation meeting the appropriate starting point is an assessment of the actual costs incurred by the applicant and an assessment of whether those costs were reasonable. That is made difficult in this case as no evidence, such as invoices paid by Ms East have been provided.

[6] As held recently by the Employment Court, the assessment of an appropriate contribution to costs in the Authority requires a different approach to assessing costs to that used by the Employment Court.³ As noted in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*,⁴ awards in the Authority will be modest taking into account conduct which increases costs unnecessarily.

[7] Nohancy Limited breached the Record of Settlement it had entered into with Ms East. Ms East was put to the expense of a filing fee on her application to enforce compliance with the Record of Settlement. It is appropriate in this case to reimburse Ms East for the filing fee. In the absence of any further supporting evidence of the actual costs incurred by Ms East I decline to award any further contribution to Ms East's costs.

² Ibid at [16].

³ *Booth v Big Kahuna Holdings Limited* [2015] NZEmpC 4 at [6].

⁴ (2006) 7 NZELC 98,128; [\[2005\] ERNZ 808](#); (2005) 3 NZELR 1 (EMC).

[8] Nohancy Limited trading as Devonport 7 Day Pharmacy is ordered to pay to Ms East the filing fee of \$71.56 within 14 days of the date of this determination.

Vicki Campbell
Member of the Employment Relations Authority