

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2015] NZERA Christchurch 106  
5521188

BETWEEN                      CHERIE NEE  
  Applicant

A N D                            BEST HEALTH PRODUCTS  
  LIMITED  
  Respondent

Member of Authority:       James Crichton

Representatives:            Andy Ogilvie, Counsel for the Applicant  
  James Yuan Gu, Advocate for the Respondent

Submissions Received:     26 June 2015 from the Applicant  
  10 July 2015 from the Respondent

Date of Determination:     31 July 2015

---

**COSTS DETERMINATION OF THE AUTHORITY**

---

**The substantive determination**

[1]     In my determination issued as [2015] NZERA Christchurch 84 on 25 June last, I rejected Ms Nee's claim for personal grievance, found that she had a modest entitlement to arrears of wages, and imposed a penalty of \$2,500 on the employer for its failure to engage appropriately with Ms Nee in respect of her wage and time records during the employment.

[2]     Costs were reserved.

**The applicant's claim for costs**

[3]     Ms Nee seeks costs in the sum of \$4,500 together with reimbursement of the Authority's filing fee of \$71.56.

[4]     That application is based on the contention that while Ms Nee was only partially successful in her claim, she was completely successful in resisting the entirely fanciful claims that Best Health Products Limited made that she was

somehow responsible for the ill health of one of the directors and/or maintaining that her claim amounted to some \$70,000. Moreover, Ms Nee relies on the claim in the statement in reply of \$20,000 in compensation against her for the stress allegedly caused by her claim on the directors of the employer.

### **The respondent's claim for costs**

[5] The respondent also seeks costs on the footing that the applicant was only partially successful and that the respondent employer ought to have a contribution to the costs it incurred which it says amounts to over \$18,000 plus GST.

[6] The amount sought by way of a contribution is \$6,000 plus GST.

### **Discussion**

[7] The principles at law for the awarding of costs in the Authority are now well settled and need not be recited again here. Broadly speaking, those principles include the precept that costs usually follow the event (that is, the successful party is entitled to have the unsuccessful party contribute to its costs), that costs in the Authority are both modest and must be reasonably incurred, and that the Authority typically commences its evaluation of a costs application by starting with a daily tariff which is currently set at \$3,500.

[8] I accept the proposition advanced for the respondent that the applicant was not entirely successful. Her claim included a claim for personal grievance and for salary payments far in excess of those she was awarded.

[9] However, she was successful in part of her wages claim (albeit a modest part) and she was also successful in having a penalty awarded in her favour which recognised the difficulty that she had in dealing with the employer and obtaining wage and time records from the employer.

[10] However, the applicant, Ms Nee, seeks to support her claim for costs beyond the daily tariff rate by reference to her having to deal with the counterclaim from Best Health Products Limited which she maintains put her to additional cost.

[11] In support of that submission, Ms Nee refers to observations made by my colleague, Member Loftus, when the file was originally on his list for disposition, to

the effect that he was aware of no legal basis on which the purported counterclaim could proceed.

[12] In addition, Ms Nee relies on various passages in my determination on the matter where I was dismissive of the putative counterclaim and/or regarded it as fanciful.

[13] While it is apparent that my observations in respect of the putative counterclaim post-dated Ms Nee's engagement of legal advice because they appeared in the eventual determination, the earlier observations of my colleague, Member Loftus, quite properly signalled that there was no legal basis for the counterclaim and that might have been taken by Ms Nee as an appropriate signal that she should not devote too much resource to resisting a claim with little legal basis.

[14] However, I can understand Ms Nee wanting to be certain that she protected herself from the employer's claims even although they were completely fanciful and therefore I make some allowance for that in fixing costs.

[15] So far as the application from the respondent employer is concerned for costs to be fixed in its favour, while it is true that Ms Nee was not completely successful in her claim, and therefore there is an argument for costs to lie where they fall (each party meeting their own costs) or for a lower amount than the daily tariff, there is certainly no argument for me to accept without evidence that Best Health Products Limited incurred \$18,000 in costs exclusive of GST.

[16] There is simply no evidence at all for that statement to be accepted; no legal advice was apparent in the way in which Best Health Products Limited behaved and certainly it had no lawyer acting for it in any of the engagements with the Authority. I am satisfied then that it is appropriate for me to dismiss out of hand a claim that it incurred that quantum of costs. Even if that were the position, I would have no hesitation in concluding that that level of costs for this sort of matter was completely unreasonable in all the circumstances.

[17] Put simply, and looking at the matter in a balanced way, I think it is fair to observe that Ms Nee was more successful than Best Health Products Limited. Although two significant aspects of Ms Nee's claim were not made out, what is absolutely evident from my substantive determination is the muddled and confusing

way in which Best Health Products Limited operated and its absolute failure to treat Ms Nee appropriately in accordance with the law in this country.

### **Determination**

[18] This matter was dealt with in less than a day of hearing time and Ms Nee, the applicant, was partially successful. Because she was only partially successful, she cannot expect to receive the entitlement that she would have received if she were completely successful. However, for reasons I have just enunciated, I am satisfied that it is the case that Ms Nee was more successful, looked at in the round, than Best Health Products Limited and as a consequence Ms Nee is entitled to an award of costs and not Best Health Products Limited.

[19] But that award of costs cannot be at the full daily rate because Ms Nee was not completely successful and certainly there is no justification for an uplift as Ms Nee claims.

[20] In all the circumstances, I think it appropriate to order Best Health Products Limited to contribute to Ms Nee's costs the sum of \$2,500.

James Crichton  
Member of the Employment Relations Authority