

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2016] NZERA Auckland 1
5366121**

BETWEEN

SACHA PETERSON
Applicant

AND

JOHN ANDREW REGINALD
COX T/A BLOMKAMP COX
SOLICITORS

Member of Authority: Eleanor Robinson
Submissions received: 2 December 2015 from Applicant
None from Respondent
Determination: 5 January 2016

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination [2015] NZERA Auckland 360 it was determined that the Applicant, Ms Sacha Peterson, had been unjustifiably dismissed by the Respondent, John Andrew Reginald Cox t/a Blomkamp Cox Solicitors (Blomkamp Cox), but not that she had been discriminated against by Blomkamp Cox in regards to her pregnancy.

[2] In that determination costs had been reserved in the hope that the parties would be able to resolve this issue between themselves. Unfortunately, they have been unable to do so, and Ms Hartdegan, on behalf of Ms Peterson, has filed a submission in respect of costs.

[3] The matter involved 1 day of meeting time. Ms Hartdegan submits that a contribution towards the actual costs incurred by Ms Peterson of \$8,537.50 (excluding GST) should be awarded in the sum of \$6,500.00.

[4] Ms Hartdegan is claiming uplift in the normal daily tariff adopted by the Authority on the basis that the matter should have been settled at mediation, and the filing by the Respondent of an unsuccessful application asserting that Ms Peterson's claim had been made outside of the statutory time limit incurred unnecessary costs for Ms Peterson.

Principles

[5] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) which states:

15 Power to award costs

(1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.

(2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[6] Costs are at the discretion of the Authority, as observed by Chief Judge Colgan in *NZ Automobile Association Inc v McKay*¹.

[7] The principles and the approach adopted by the Authority on which an award of costs is made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*².

[8] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*³ that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*⁴ at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.”

[9] It is also a principle that costs are not to be used as a punishment or expression of disapproval of the unsuccessful party’s conduct.

Determination

[10] A tariff based approach is that usually adopted by the Authority, which has the discretion to raise or lower the tariff, depending upon the circumstances. For a 1 day investigation meeting the tariff would normally equate to \$3,500.00.

[11] Costs normally follow the event and Ms Peterson is entitled to a contribution towards her costs.

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2005] 1 ERNZ 808

⁴ [2001] ERNZ 305

[12] The cases which fall to be determined by the Authority have normally been to mediation first, and not settled in that forum. I do not therefore accept that this is a basis for increasing costs.

[13] In respect of the preliminary matter which was determined by Member Crichton 'on the papers', it was determined in respect of costs at para [20] that: "*As both parties act for themselves, there is no issue as to costs*"

[14] Blomkamp Cox is ordered to pay Ms Peterson the sum of \$3,500.00 costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

[15] Blomkamp Cox is also to reimburse Ms Peterson the filing fee of \$71.56.

Eleanor Robinson
Member of the Employment Relations Authority