

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2016] NZERA Auckland 80  
5539621

BETWEEN                      KIM CHARLEEN TEINAKI  
   Applicant  
  
A N D                              NATURE'S SUNSHINE  
   PRODUCTS (NZ) LIMITED  
   Respondent

Member of Authority:        James Crichton  
  
Representatives:              Michael Quigg, Counsel for Applicant  
   Michael Smyth, Counsel for Respondent  
  
Submissions Received:      24 February 2016 from Applicant  
   11 February 2016 from Respondent  
  
Date of Determination:      11 March 2016

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**COSTS DETERMINATION OF THE AUTHORITY**

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**The substantive determination**

[1]     In my determination issued as [2016] NZERA Auckland 11, on 11 January 2016, I rejected Ms Teinaki's claim and found exclusively for the respondent employer, Nature's Sunshine.

[2]     Costs were reserved.

**The claim for costs**

[3]     Nature's Sunshine seeks an award of costs of \$7,000 based on the notional daily tariff approach and the contention that the matter was dealt with in two days. That latter point anyway is accepted by Ms Teinaki.

[4] I am provided with copies of invoices to confirm that the total fees charged to Nature's Sunshine inclusive of GST and disbursements exceeded \$22,400. Even without the GST component, the total fees charged amounted to nearly \$20,000.

### **The response**

[5] In submissions filed for Ms Teinaki by her new counsel, who was undertaken to take the matter on challenge to the Employment Court and has filed costs submissions in this matter to assist the Authority notwithstanding that he was not counsel in the Authority proceeding, Ms Teinaki agrees that the starting point for the fixing of costs must be \$7,000 but seeks a reduction in that sum because of the applicant's financial predicament.

[6] That financial predicament is occasioned, first by Ms Teinaki's inability to obtain gainful employment after the dismissal from Nature's Sunshine for some six months, and second the prospect that her husband may also be about to lose his position.

[7] Moreover, I am advised that there are no savings and some personal debt. Counsel has helpfully attached to his submissions details of Ms Teinaki's efforts to find employment and thus mitigate her loss together with details of her bank account position and credit card statement.

[8] I am advised in the submissions for Ms Teinaki that an award of \$7,000 would impose "*undue financial hardship*", that payment by instalment is sought, and that once this determination issues, Ms Teinaki will apply for a stay in respect of both the substantive determination in this matter and this current costs determination.

### **Determination**

[9] The law on costs fixing in the Authority is well settled and need not be recited again here. Suffice it to say that costs in the Authority are usually modest, that like other legal proceedings, costs follow the event and that the Authority's daily tariff approach is the traditional starting point.

[10] Nature's Sunshine as the successful party seeks a costs award of \$7,000 being the effect of the application of the daily tariff approach in respect of a two day hearing.

[11] Ms Teinaki seeks a reduction on the grounds of being impecunious, and time to pay.

[12] In relation to both of those matters, I have some grave doubt as to the ability of the Authority to entertain either submission. Dealing first with the proposed payment by instalment arrangement, counsel for Ms Teinaki quite properly reminds me of the Authority decision in *Elliot v. Chief Executive of the Department of Corrections* [2015] NZERA Wellington 26 where the Authority opined (I think correctly) that it is doubtful if this Authority has the power to make an order for instalments.

[13] As to the power to reduce or even remove the costs imposed altogether on the grounds of impecuniosity, I am obliged to consider the recent judicial pronouncements including the very careful analysis of this very issue by Judge Inglis in *Stevens v. Hapag-Lloyd* [2014] NZEmpC 125 where Her Honour took a somewhat jaundiced view of a decision of mine at first instance where I had dramatically reduced a costs award that would otherwise have applied because of my conviction that the paying party had limited means.

[14] In all the circumstances, and having regard to the intimation in the submissions that a stay is likely to be sought, I think the proper course is for me to direct that Ms Teinaki is to pay to Nature's Sunshine the sum of \$7,000 as a contribution to its costs.

James Crichton  
Chief of the Employment Relations Authority