

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2016] NZERA Auckland 396  
5604461

BETWEEN	NENA HERGATT Applicant
AND	WANDA HENDRIKSE AND JAMES COCHRANE TRADING AS MCBREENS SOLICITORS Respondent

Member of Authority:	Vicki Campbell
Representatives:	Alex Hope for Applicant Simon Scott for Respondents
Investigation Meeting:	22 August 2016
Submissions Received:	25 October 2016 from Applicant No submissions from Respondents
Determination:	5 December 2016

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A. Wanda Hendrikse and James Cochrane trading as McBreens Solicitors are ordered to pay to Ms Hergatt a contribution to her costs in the amount of \$1,863.06 within 14 days of the date of this determination.**

[1] In a determination dated 27 September 2016<sup>1</sup> I held that one or more conditions of Ms Hergatt's employment were affected to her disadvantage and that she was unjustifiably dismissed.

[2] I reserved costs, indicating that if the parties were unable to resolve that issue, both parties would have the opportunity to file costs memoranda and evidence. I have

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<sup>1</sup> [2016] NZERA Auckland 330.

received submissions from the Applicant but have not received any submissions from Wanda Hendrikse and James Cochrane trading as McBreens Solicitors (McBreens) despite a reminder email being sent to McBreen's representative on 10 November 2016.

[3] 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**

[4] Under normal circumstances the Authority would apply a starting point of a notional daily tariff for quantifying costs.

[5] Ms Hergatt was legally aided. Total fees invoiced to Legal Aid Services, Ministry of Justice were \$4,624.79 (GST inclusive) which includes disbursements totalling \$113.06 for the filing fee and photocopying. Ms Hergatt seeks a contribution of \$3,500 being the daily tariff plus disbursements.

[6] 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.<sup>2</sup> As noted in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*<sup>3</sup> awards in the Authority will be modest taking into account conduct which increases costs unnecessarily.

[7] As noted by the Court in *Stevens v Hapag-Lloyd (NZ) Ltd* proceedings in the Authority are intended to be low level, cost effective, readily accessible and non-technical.<sup>4</sup> Also of relevance is the comment by the Court that:<sup>5</sup>

parties who elect to incur costs that are likely to exceed the Authority's notional daily rate are entitled to do so but cannot confidently expect to recoup any additional sums.

[8] The daily tariff applying to this matter is \$3,500. The matter took half a day and was not overly complex. Using the starting point of \$3,500 and taking all the

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<sup>2</sup> *Booth v Big Kahuna Holdings Limited* [2015] NZEmpC 4 at [6].

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

<sup>4</sup> [2015] NZEmpC 28 at[94] and cited with approval in *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [107].

<sup>5</sup> *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [108].

circumstances into account I consider an appropriate contribution to Ms Hergatt's costs to be \$1,750 plus \$113.06 disbursements.

[9] Wanda Hendrikse and James Cochrane trading as McBreens Solicitors are ordered to pay to Ms Hergatt a contribution to her costs in the amount of \$1,863.06 within 14 days of the date of this determination.

Vicki Campbell  
Member of the Employment Relations Authority