

IN THE EMPLOYMENT RELATIONS AUTHORITY

AUCKLAND

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2019] NZERA 242

3053172

BETWEEN

KAREN CURRIE
Applicant

AND

BAY OF PLENTY SEXUAL
ASSAULT SUPPORT SERVICE
TRUST
Respondent

Member of Authority: Eleanor Robinson

Representatives: Allan Halse, Advocate for Applicant
Jeremy Sparrow, Counsel for Respondent

Submissions: 2 April 2019 from the Applicant
2 April 2019 from the Respondent

Determination: 23 April 2019

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In a determination dated 7 March 2019 ([2019] NZERA 132, the Authority declined an application for removal made by the Applicant, Ms Karen Currie, in respect of her claim against the Respondent, Bay of Plenty Sexual Assault Support Service Trust (BOPSASS).

[2] In that determination I indicated at paragraph [28] that I was minded to reserve the issue of costs until resolution of the substantive matter. However I invited the parties to file

memoranda on the issue of costs if they were minded to do so, and the Respondent has filed a memorandum seeking costs.

[3] Mr Sparrow, on behalf of BOPSASS, is seeking an award of costs in respect of those incurred in the removal matter, being the sum of \$3,992.80.

[4] Mr Sparrow submits that the interlocutory application for removal was a quasi-appeal which had no legal foundation and as such, justifies an increase in the costs award. In particular Mr Sparrow submits that the grounds for removal challenged the Preliminary issue determination which was not legitimate and neglected the proper appeal process which was available to the Applicant.

[5] In addition it is submitted that the Applicant had the opportunity to file any supplementary submissions in respect of the Application for Removal within a further 14 days but chose not to do so.

[6] Mr Halse, acting on behalf of the Applicant has made no submissions regarding costs.

Costs Award

[7] The Authority's power to award costs is at the discretion of the Authority pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act).

[8] The principles the Authority applies in respect of costs are well-settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*¹. The principles include that costs generally follow the event and that costs will be modest and reasonable.

[9] The Respondent has been the successful party in the removal application and is entitled to costs in that proceeding.

[10] The matter was determined by the Authority on the papers by way of timetabled submissions and the parties were not put to the expense of attending at an investigation meeting.

[11] This matter is set down for a substantive hearing on 12 & 13 June, which is within a relatively speedy timeframe. On that basis I do not feel that there will be a significant detriment to the Respondent in costs being deferred until that matter is determined.

¹*PBO v Da Cruz* [2005] 1 ERNZ 808

[12] Whilst I think it is appropriate that the costs in this matter are deferred pending the conclusion of the matter, I also consider it very important to remind the Applicant to be mindful of the costs implications associated with unsuccessful claims in the Authority, and that at some stage these will have an impact on an ultimate costs award.

Eleanor Robinson

Member of the Employment Relations Authority