

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2020] NZERA 159
3070812**

BETWEEN

DIPIKA MACKENZIE
Applicant

AND

HUNTINGTON'S DISEASE
ASSOCIATION (AUCKLAND)
INC
Respondent

Member of Authority: Eleanor Robinson

Submissions received: 9 April 2020 from the Applicant
16 March 2020 from the Respondent

Determination: 21 April 2020

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination [2020] NZERA 96 it was determined that Ms Dipika Mackenzie's the Applicant's, application for reopening the investigation into substantive claims that she had been constructively dismissed and unjustifiably disadvantaged by the Respondent, Huntingdon's Disease Association (Auckland) Limited (HDA) should not be granted.

[2] Costs were reserved in the respect of the reopening application in the hope that the parties would be able to settle this issue between them. Unfortunately they have been unable to do so, and the parties have filed submissions in respect of costs.

[3] The matter was determined 'on the papers'.

[4] Mr Headifen, on behalf of HDA, is seeking a contribution to costs on the basis of the normal daily tariff in the Authority equivalent to a half day of investigation hearing time.

[5] In support of this application Mr Headifen submits that the application to reopen the investigation was an attempt to re-litigate the substantive matter, and that it involved HDA in research and preparation.

[6] It is further submitted that the principle that costs should follow the event should be followed in this case.

[7] Mr Mapu for Ms Mackenzie submits that it should have been obvious that the investigation should have been reopened, and on that basis it would be unfair to impose costs on the Applicant.

Principles

[8] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 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.

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

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

Determination

[11] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*³ that costs are modest. Principles also include that costs are reasonable and that they normally follow the event.

[12] I see no reason for not applying these principles in this case. HDA was successful in the reopening application.

[13] Costs in the Authority are made in accordance with a daily tariff amount which is currently set at \$4,500.00 for the first day of hearing. The matter was determined 'on the papers'. Costs normally follow the event and the Respondent is entitled to a contribution towards its costs.

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2005] 1 ERNZ 808

[14] I consider it appropriate to base the level of costs on the normal tariff in the Authority as at the date of filing and to take a half day investigation meeting as the starting point.

[15] Accordingly Ms Mackenzie is ordered to pay HDA the sum of \$2,250.00 towards its legal costs.

Eleanor Robinson
Member of the Employment Relations Authority