

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2020] NZERA 340  
3045557

BETWEEN                      MARTYN HORTON  
Applicant

A N D                              ST & CJ BELL LIMITED  
Respondent

Member of Authority:        David G Beck

Representatives:             Allan Tobeck, counsel for the Applicant  
Sara Jamieson, counsel for the Respondent

Investigation Meeting:      On the papers

Submissions Received:      None from the Applicant  
21 July 2020 from the Respondent

Date of Determination:      26 August 2020

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**COST DETERMINATION OF THE AUTHORITY**

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**The Determination**

[1]     On 16 January 2020 the Authority issued a determination finding that:

Mr Horton's employment was governed by an employment agreement that contained a valid 90 day trial period clause. His dismissal was effected in a manner consistent with that clause and as a result, he was not unjustifiably dismissed.

Having found that Mr Horton was not unjustifiably dismissed, it is not necessary to consider remedies.

[2] The parties were asked to explore resolving costs by agreement but failed to do so.

### **Submission from ST & CJ Bell Limited**

[3] ST & CJ Bell Limited's counsel, Ms Jamieson, briefly submitted that having successfully resisted Mr Horton's unjustified dismissal claim they seek a contribution to costs of \$4,500 (the notional daily tariff).

[4] No submission was received by Mr Tobeck on behalf of the unsuccessful applicant.

### **Principles**

[5] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000. The discretion it is accepted is guided by principles set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>1</sup> including: that costs are not to be used as a punishment or as a reflection on how either party conducted proceedings and that awards are to be made consistent with the equity and good conscience jurisdiction of the Authority.<sup>2</sup>

### **Assessment**

[6] A general principle for a successful party is that costs should 'follow the event' and here ST & CJ Bell Limited were wholly successful on a threshold issue (the existence of a valid and enforceable trial period) that prevented Mr Horton's personal grievance claim proceeding. Accordingly ST & CJ Bell is entitled to a contribution to their costs of representation that had to be incurred due to the moderate complexity of the issues involved that Mr Horton's counsel identified and had to be re-butted by evidence and legal submissions.

[7] I have been provided with no counter view or evidence of Mr Horton's financial circumstances as his counsel did not make a submission on his behalf.

[8] In these circumstances, I consider that the daily tariff should apply as no extraordinary circumstances have been brought to my attention that would persuade me otherwise and this was a one day hearing.

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<sup>1</sup> *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

<sup>2</sup> Section 160(2) Employment Relations Act 2000.

## **Award**

[9] I order Mr Horton to pay ST & CJ Bell Limited the sum of \$4,500.00 as a contribution to their legal costs incurred.

David G Beck  
Member of the Employment Relations Authority