

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 392
3071754

BETWEEN DAVID APPLEYARD
Applicant

AND CORELOGIC NZ LIMITED
Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Simon Mitchell, counsel for the Applicant
Jessie Laphorne and Nikita Bartlett, for the Respondent

Investigation Meeting: On the papers

Submissions [and further 18 September 2020 from the Applicant
Information] Received: 12 March 2020 from the Respondent

Date of Determination: 1 October 2020

COSTS DETERMINATION OF THE AUTHORITY

- A. The applicant, Mr David Appleyard must pay the respondent, Corelogic NZ Limited (Corelogic) the sum of \$2000 as a contribution to its reasonably incurred costs of representation.**

Substantive determination

[1] By determination on 26 February 2020, the Authority found that Corelogic gave Mr Appleyard notice of termination during a 90-day trial period, in accordance with his employment agreement and with s67B of the Employment Relations Act 2000 (the Act).

Accordingly, Mr Appleyard's employment relationship problem was barred from proceeding under the Act.¹ Costs were reserved.

Submissions as to costs

[2] Counsel for Corelogic filed a memorandum as to costs seeking a contribution of \$6,000 in costs. The amount sought is an uplift of 50% on the Authority's notional daily tariff which Counsel argued was reasonable and proportionate in all the circumstances. Corelogic's starting point for the daily tariff was \$3000 based on preparation and time of two thirds of a day. The uplift is justified by Counsel for Corelogic on the basis that Mr Appleyard's actions caused unnecessary costs to Corelogic, "...primarily as a result of bringing a claim in a settled and widely accepted area of the law".² Actual costs incurred by Corelogic were more than double the amount sought by it.

[3] Counsel for Mr Appleyard submits that in circumstances where parties agree a matter can be dealt with on the papers it is not appropriate for costs to be considered on the basis of the usual daily tariff of \$4,500. Counsel submits \$1500 to be appropriate. In support of his submission, Counsel for Mr Appleyard argues that the costs incurred by Corelogic to be surprising given the narrow issue before the Authority. He also cites a recent award of costs by the Authority in the sum of \$2,000 in another matter dealt with by it on the papers.

Costs determination

[4] The Authority's power to award costs against a party is set out in clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) which provides as follows:

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.

[5] The Authority has a discretionary power to award costs which must be exercised on a principled basis.

¹ *Appleyard v Corelogic NZ Limited* [2020] NZERA 92

² Counsel for Corelogic's submissions para[8].

[6] 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 Limited) v Da Cruz*.³ Principles set out in *Da Cruz* include that costs are to be modest, not used as a punishment and reasonable. As to quantification of costs, the principle is one of reasonable contribution to costs actually and reasonably incurred.

[7] The Authority's assessment of costs usually starts from a notional daily tariff which may be adjusted upwards or downwards to account for relevant factors or particular circumstances in the case. The applicable tariff is \$4,500 for the first day of an investigation meeting and \$3,500 for each day thereafter. This matter was dealt with on the papers, there was no face to face investigation meeting. However, the applicant filed an affidavit and two affidavits were filed on behalf of the respondent. Comprehensive legal submissions were also filed by both parties.

[8] Having considered the submissions made by counsel for, I find that Mr Appleyard as the successful party is entitled to an award of costs in accordance with the normal daily tariff. As the matter was dealt with on the papers without the need for witnesses to appear, I accept that the time involved was less than would have been the case if an investigation meeting had been held. I consider costs in the sum of \$2,000 to be reasonable and in line with costs awards made in similar circumstances by the Authority.

[9] I order payment of the sum of \$2,000 to be made by Mr Appleyard to Corelogic within 28 days of the date of this determination.

Anna Fitzgibbon
Member of the Employment Relations Authority

³ [2005] 1 ERNZ 808