

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2021] NZERA 273  
3108552

BETWEEN                      ELISABETH SIEGMUND  
Applicant

AND                              MARLBOROUGH TOUR  
COMPANY LIMITED  
Respondent

Member of Authority:      Michael Loftus

Representatives:           Applicant in Person  
Brian Fletcher, counsel for Respondent

Submissions Received:    27 May and 11 June 2021 from the Applicant  
11 June 2021 from the Respondent

Date of Determination:    23 June 2021

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]      On 3 May 2021 I issued a determination in which I concluded that Ms Siegmund had a personal grievance having been unjustifiably dismissed.<sup>1</sup>

[2]      Costs were reserved and as the successful party Ms Siegmund now seeks a contribution toward those she incurred in pursuing her claims.

[3]      Normally the Authority uses a daily tariff approach when addressing costs applications and that is the basis of Ms Siegmund's claim.<sup>2</sup> She seeks \$4,500 for a one day investigation

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<sup>1</sup> [2021] NZERA 36

<sup>2</sup> *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808 and *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135

plus reimbursement of the filing fee. That said, issues arise must arise as Ms Siegmund was self-represented at the investigation.

[4] Ms Siegmund addresses that by saying that while she represented herself in the investigation she was supported by counsel throughout. In support of her claim she itemises expenses which exceed the costs claim and there are supporting documents which refer to both legal services and travel costs.

[5] MTCL concedes the filing fee but denies anything else should be payable given the usual rule that self-represented parties are not entitled to costs. Reference is also made to the substantive conclusion and it is argued that while MTCL did all it could to act properly, it was caught by a situation beyond its control. Finally reference is made to the fact Ms Siegmund was not wholly successful with issues arising about the wage component of her claim. The last two points I put aside. Costs are not a vehicle by which the substantive issues can be revisited and the wage issue was, at least as far as time spent during the investigation is concerned, *de minimis*.

[6] The Authority has the power to order a party pay a contribution toward another's costs and expenses as it thinks reasonable with such awards generally intended to assist in meeting the reasonable cost of professional representation and expenses (such as witness expenses) incurred by a successful party before the Authority.<sup>3</sup>

[7] The legal costs Ms Siegmund refers to come in two parts. The first relates to an advocate that the evidence suggests Ms Siegmund sought initial advice from at the time the events she subsequently challenged were unfolding. That would not normally be recoverable but I also note his invoice states his services were provided on a *no win, no fee* basis. I have no evidence he took any part in the subsequent litigation or played any part in the eventual outcome. Indeed, and as already said, the information I have indicates the contrary and that his involvement had ceased by the time litigation commenced. These costs are not therefore recoverable.

[8] The second reference to legal costs involves a law firm that was clearly involved at the time litigation was commenced and thereafter though they did not attend the investigation as Ms Siegmund could not afford that support. They participated in the teleconference at which

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<sup>3</sup> Clause 15 Schedule 2 Employment Relations Act 2000

the investigation was planned and while Ms Siegmund wrote the Statement of Problem counsel advised he had assisted. These are, in my view, legitimate costs of legal representation of the type normally recognised in a costs award. That said Ms Siegmund should note a costs award is a contribution and are not, except in limited circumstances which do not exist here, full reimbursement. I also have to note that while she claimed on the basis of a full day the investigation only went for about half a day. Having considered the information before me I conclude a contribution of \$1,000 appropriate.

[9] The final issue is that Ms Siegmund also appended invoices in respect to accommodation and travel costs she incurred in attending the investigation. In the normal course of events each party would be expected to bear such costs when they apply to themselves. In any event, I note the claim was for the tariff which applies to professional representation costs and no claim was specified for the travel expenses.<sup>4</sup> This is not therefore payable.

### **Conclusion and Orders**

[10] For the above reasons I conclude Ms Siegmund is entitled to a contribution toward the costs she incurred but not of the magnitude sought.

[11] As a result I order Marlborough Tour Company Limited, pay Ms Siegmund, \$1,071.56 (one thousand and seventy one dollars and fifty six cents) as a contribution toward costs and reimbursement of the Authority's filing fee.

Michael Loftus  
Member of the Employment Relations Authority

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<sup>4</sup> Costs application dated 27 May 2021 at [4]