

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2021] NZERA 47  
3104175

BETWEEN	RUI DE SOUSA, CHANTAL DE SOUSA, SARA CAVANAGH, CAMERON KEATS, NICHOLAS KEAN, GUILHERME ARAUJO, SONTHI BANPHET AND CHARLOTTE MORISON Applicants
AND	BAYSIDE FINE FOOD LIMITED Respondent

Member of Authority:	Marija Urlich
Representatives:	Simon Mitchell, counsel for the Applicant No appearance for the Respondent
Investigation Meeting:	On the papers
Submissions and information received:	3 February 2021 from Applicants
Determination:	11 February 2021

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 22 January 2021 the Authority found the applicants had been unjustifiably dismissed and made awards in their favour of wage arrears, lost wages and compensation for non-economic loss<sup>1</sup>. Costs were reserved and a timetable set for filing submissions as to costs. Given its failure to participate in the Authority investigation including not filing a statement in reply Bayside Fine Food Limited

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<sup>1</sup> *De Sousa & Ors v Bayside Fine Food Limited* [2021] NZERA 27.

(BFFL) was required to file an application for leave to respond to the applicants' costs submission if it was its intention to do so. BFFL has not filed such an application within the directed timeframe.

### **The applicants' claim for costs**

[2] Submissions filed on behalf of the applicants seek a costs award of \$4,500, the Authority notional daily tariff. The applicants submit though the investigation meeting was less than a day information and submissions required by the Authority and subsequently filed mean an award of the notional daily tariff is justified.

[3] The Authority is satisfied the applicants have incurred actual costs in excess of the daily tariff.

### **Costs principles**

[4] The Authority has power under clause 15 of Schedule 2 of the Act to award costs. This power is discretionary and must be used in a principled manner. In *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* the Employment Court set out principles guiding the Authority's approach to costs which include:

- The statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction.
- Equity and good conscience is to be considered on a case by case basis.
- Costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.
- Costs generally follow the event.
- Awards will be modest.
- Frequently costs are judged against a notional daily tariff.<sup>2</sup>

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<sup>2</sup> *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 8080, confirmed in *Fagotti v Acme & Co Ltd* [2015] NZEmp 135.

### **Costs analysis**

[5] The applicants were wholly successful in their claim and costs should follow the event. They are entitled to a contribution to the cost of representation. The investigation meeting lasted half a standard hearing day. It is accepted directions of the Authority made at the investigation hearing has resulted in further costs being incurred and that, at least in respect of the requested submissions, concerned matters that could not have been anticipated prior to the hearing. It is also accepted that the applicants' approach to and preparation of their claim, including hearing their claims together, was an efficient use of both their and the Authority's resources.

[6] The applicants are entitled to costs of \$4500.

### **Conclusion**

[7] Bayside Fine Food Limited is ordered to pay the applicants \$4500 as a contribution to their costs within 21 days of the date of this determination.

Marija Urlich  
Member of the Employment Relations Authority