

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2022] NZERA 454  
3143861

BETWEEN	TYLA ROBERTS Applicant
AND	SIMPLY GIRLS PAINTERS AND DECORATORS LIMITED First Respondent
AND	KATHERINE COURTENAY - ROE Second Respondent

Member of Authority: Peter Fuiava

Representatives: Rachel Webster, counsel for the Applicant  
Katherine Courtenay-Roe, company director of the First Respondent

Submissions and information received: 28 July 2022 from the Applicant  
28 July and 1 August 2022 from the Second Respondent

Determination: 9 September 2022

---

**COSTS DETERMINATION OF THE AUTHORITY**

---

- A. Simply Girls Painters and Decorators Limited to pay \$2,250 as a contribution towards Tyla Jaime Roberts' costs and \$71.56 being the Authority filing fee no later than 5 pm Monday 10 October 2022.**

[1] In a determination issued on 19 July 2022, the Authority found that Simply Girls Painters and Decorators Limited (Simply Girls) had unjustifiably dismissed Tyla Roberts.<sup>1</sup> By way of remedies, the Authority awarded Ms Roberts \$12,000 in

---

<sup>1</sup> *Tyla Roberts v Simply Girls Painters and Decorators Limited* [2022] NZERA 333 (Member Nuttall).

compensation for humiliation, loss of dignity and injury to feelings pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act).

[2] The question of costs was reserved and the parties were encouraged to resolve the matter between themselves. If they were not able to do so, Ms Roberts was to file a memorandum within 14 days of the date of issue of the determination. Simply Girls was given 14 days after service to file a memorandum in reply.

[3] On 28 July 2022 Ms Roberts' counsel, Ms Webster, lodged and served a memorandum as to costs. Later that same day Ms Courtenay-Roe, who is the sole director of the first respondent company, emailed the Authority the following reply:

“ ... Neither the company nor myself due to COVID have any assets. The company is still operating but has many outstanding debts including to the IRD because of this we will be forced to liquidate the company but if the other party wish to do that on my behalf I am quite happy for them to do that. If this bullying entitled behaviour persists I'll be forced to file for personal bankruptcy.”

[4] The Authority inquired with the respondents whether their email communication was their response to the applicant's memorandum seeking costs. By email of 1 August 2022, Ms Courtenay-Roe answered affirmatively and reiterated that due to COVID, the respondents had no financial means to pay costs.

### **Costs principles**

[5] The Authority has the power under clause 15 of Schedule 2 of the Act to award costs. The principles and approach adopted by the Authority in respect of this power are well settled and outlined in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*.<sup>2</sup> Those principles are as follows:

- a. The Authority has a discretion whether to award costs, and how much, but the discretion must be exercised in accordance with principle and not arbitrarily.
- b. The statutory jurisdiction toward costs is consistent with the Authority's equity and good conscience jurisdiction.
- c. Equity and good conscience are to be considered on a case-by-case basis.

---

<sup>2</sup> *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

- d. Costs are not to be used to punish or express disapproval for the unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.
- e. The Authority can consider whether all or any of the parties' costs were unnecessary or unreasonable.
- f. Costs generally follow the event (i.e., the unsuccessful party will normally be required to contribute to the costs of the successful party).
- g. *Calderbank offers* may be taken into account when setting costs.
- h. Awards will be modest.
- i. Frequently costs are judged against the notional daily tariff.
- j. The nature of the case can influence costs, which means the Authority may order those costs should lie where they fall.

[6] On 2 May 2022, Practice Note 2, Costs in the Employment Relations Authority, came into effect. Among other things, the practice note reaffirmed the Authority's use of the notional daily tariff (currently \$4,500 for the first day of any matter and \$3,500 for any subsequent day of the same matter) as the starting point in assessing costs. Various factors and principles may have the effect of increasing or decreasing the amount of costs awarded.

### **Costs submissions**

[7] In her memorandum of 28 July 2022, Ms Webster sought an uplift in the notional daily tariff due to the following behaviours by the respondent which unnecessarily increased Ms Roberts' costs:

- (i) the respondents' refusal to engage in settlement negotiations in 2021 and not responding to a mediator from Employment Mediation Services who was trying to arrange mediation;
- (ii) the respondents' attempt to remove Simply Girls from the Companies Office Register which resulted in counsel having to lodge an objection with the Companies Office from that occurring;
- (iii) the respondents delaying of a case management conference (CMC) from being set down to progress matters to an investigation meeting; and

- (iv) the respondents behaviour on social media which has resulted in the present application for costs.

[8] It is understood from counsel that shortly after the determination, Ms Courtenay-Roe went on social media and stated that she was moving assets and that she and her company would not be complying with the Authority's determination. Ms Webster further stated that Ms Roberts' legal fees following mediation equated to \$5,250 plus the Authority filing fee of \$71.56.

### **Costs analysis**

[9] Ms Roberts was successful in her claim against Simply Girls for unjustified dismissal. She was awarded \$12,000 in compensation for hurt and humiliation. The investigation meeting took half a day. The notional daily tariff for the first day of an investigation meeting is currently \$4,500 half of which is \$2,250. I adopt as my starting point this sum which may increase or decrease depending on a range of relevant factors.

[10] Ms Webster invites the Authority to increase the notional tariff because of behaviours that have unnecessarily increased Ms Roberts' costs. The proper response to an alleged delay of a CMC is not costs but a penalty under s 134A of the Act. No such penalty was applied for or considered by the Authority and in any event, I do not consider the delay in having the CMC set down prejudiced Ms Roberts' case in a material way.

[11] As for the respondents not attending mediation, it is not unusual for one party of an employment relationship problem to not attend mediation. If failure to attend mediation was justification for increasing costs, this would run counter to the principle that costs not be used to punish or express disapproval of an unsuccessful party's conduct. Costs must also be modest.

[12] In terms of the objection Ms Webster lodged with the Companies Office to stop Simply Girls from being removed from the Companies Register, it has not been established that this was an arduous feat when such applications can conveniently be made online.

[13] Finally, Ms Courtenay-Roe's social media post is not relevant to the costs-setting exercise as this occurred after the investigation meeting had ended and after the Authority had released its determination. Where the social media post is likely to have greater relevance is in enforcement proceedings of a court order.

[14] It is noted that Ms Courtenay-Roe has stated that due to the COVID-19 pandemic, neither she nor Simply Girls can financially afford to pay any costs. However, that statement was not supported with any financial information and as such the respondents' impecuniosity (if any) has not been established.

[15] Based on the information and evidence before me, I find no reason to give Simply Girls a longer than usual period to pay costs including the Authority's filing fee. For the reasons given, this is not a case where it has been established that the notional daily tariff for a half day investigation meeting requires an upwards (or downwards) adjustment.

### **Orders**

[16] Simply Girls Painters and Decorators Limited is ordered to pay Tyla Roberts costs of \$2,250 and \$71.56 for the Authority's filing fee no later than 5 pm Monday 10 October 2022.

Peter Fuiava  
Member of the Employment Relations Authority