

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2022] NZERA 472
3135464

BETWEEN

RONIQUE ROSSER
Applicant

AND

SIMPLY GIRLS PAINTERS
AND DECORATORS
LIMITED
First Respondent

KATHERINE COURTENAY-
ROE
Second Respondent

Member of Authority: Marija Urlich

Representatives: Alex Kersjes, advocate for Applicant
Ms Courtenay-Roe, in person

Investigation Meeting: On the papers

Submissions and information received: 23 August 2022 from the Applicant
25 August 2022 from the Respondents

Determination: 19 September 2022

COSTS DETERMINATION OF THE AUTHORITY

[1] The Authority issued a determination on 9 August 2022 which found Ms Rosser had established a personal grievance for unjustifiable dismissal and that Simply Girls Painters and Decorators Limited (Simply Girls) owed her arrears of wages and holiday pay entitlements.¹ Awards were made in Ms Rosser's favour to compensate her for losses suffered consequent to her unjustified dismissal and allow her to recover the established arrears. The penalty claims against Simply Girls and Ms Courtenay-Roe were unsuccessful. The issue of costs was reserved and a timetable set.

¹ *Rosser v Simply Girls Painters and Decorators Ltd & Katherine Courtenay-Roe* [2022] NZERA 376.

[2] Within the timetable set submissions were filed on behalf of Ms Rosser seeking a contribution to costs and further information was subsequently provided to support the costs claim. Ms Courtenay-Roe emailed the Authority on 25 August to advise it is understood, Simply Girls has no money to pay any awards. No supporting information was provided.

Costs principles

[3] 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. Principles guiding the Authority's approach to costs 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.

Costs analysis

[4] Ms Rosser was the successful party and it is usual that costs follow the event and that the unsuccessful party will be required to make a contribution towards the successful party's costs. It is accepted she has incurred actual costs of \$7,185.60 in respect of this matter and disbursements of \$145.60. She should receive a contribution to costs which I am satisfied were reasonably incurred.

[5] The notional daily tariff is a starting point. The applicable daily tariff is \$4,500.00 with subsequent days \$3,500.00. This matter involved investigation meeting time of one day. Costs are sought at the rate of the first-day notional daily tariff plus disbursements.

[6] Ms Rosser submits she has attempted to engage with Simply Girls to reach agreement over the issue of costs without success and that the matter has been time consuming and complicated due to the conduct of Simply Girls.

[7] Having considered the submissions and information received and guided by the principals applicable to a consideration of costs Ms Rosser is entitled to a costs award of \$4,500 and is entitled to be reimbursed for the disbursements incurred of \$145.60.

Outcome

[8] Simply Girls Painters and Decorators Limited is ordered to pay Ronique Rosser \$4,645.60 as a contribution to her costs within 21 days of the date of this determination.

Marija Urlich
Member of the Employment Relations Authority