

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

**[2022] NZERA 637  
3135506**

BETWEEN                      MARLENE DESTEFANI  
   Applicant  
  
AND                                JOHN PYE t/a FLORETTE CAFE  
   Respondent

Member of Authority:        Eleanor Robinson  
  
Representatives:              Dave Cain, advocate for the Applicant  
   Respondent in Person  
  
Submissions Received:        25 October 2022  
   None from the respondent  
  
Date of Determination:        1 December 2022

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]        In a determination dated 11 October 2022, [2022] NZERA 520, I determined that Ms Destefani was constructively dismissed by the Respondent, Mr John Pye, trading as Florette Café, and that she was owed monies in respect of annual and public leave holiday entitlements and Kiwisaver contributions.

[2]        In that determination I encouraged the parties to resolve the issue of costs between themselves. They have been unable to do so and the applicant has filed submissions and supporting detailed invoices in respect of costs.

[3]        The matter involved one day of an investigation meeting on 31 August 2022.

[4]        Ms Destefani is seeking costs in the sum of \$5,375.00 plus disbursements on the basis that submissions were required to be provided in writing to the Applicant and seeks an additional one quarter day of the daily tariff in recognition of this.

### *Principles*

[5] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 which states:

#### **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.

[6] Costs are at the discretion of the Authority<sup>1</sup>.

[7] 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 Ltd) v Da Cruz (Da Cruz)*<sup>2</sup>.

[8] It is a principle set out in *Da Cruz* that costs will be modest. It is also a principle that costs are discretionary and awards made are consistent with the Authority's equity and good conscience jurisdiction.

### **Costs Award**

[9] Ms Destefani was the successful party in her case before the Authority, and following the principles deriving from *Da Cruz*, she is entitled to costs.

[10] This was a one day matter. Ms Destefani was successful in respect of her claim of constructive dismissal; but there was no separate finding in respect of the unjustifiable disadvantage claim since I determined this was contingent upon the constructive dismissal.

[11] As set out in the Directions minute of 28 February 2022: "The parties are to lodge and serve a written copy of their closing submissions just prior to the investigation meeting." This is a standard direction in Authority investigations.

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<sup>1</sup> *NZ Automobile Association Inc v McKay* [1996] 2 ERNZ 622

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

[12] There was therefore no extra requirement for the closing submissions to be in writing for this case, and no additional costs are allowed in respect of this.

**[13] Accordingly I order Mr Pye to contribute \$4,500.00 to Ms Destefani's pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.**

**Eleanor Robinson  
Member of the Employment Relations Authority**