

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2023] NZERA 253  
3176367

BETWEEN

NATHAN CORRIGAN  
Applicant

AND

PRIME FOCUS SECURITY  
LIMITED (IN  
LIQUIDATION)  
Respondent

Member of Authority: Sarah Blick

Representatives: Javana Schiphorst, counsel for the applicant  
No appearance for the respondent

Investigation meeting: On the papers

Submissions or information received: 23 March 2023 from the applicant

Determination: 18 May 2023

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] The Authority issued a determination on 10 March 2023 which found the applicant Mr Nathan Corrigan was unjustifiably disadvantaged and constructively dismissed by Prime Focus Security Limited (in liquidation) (PFS). It awarded remedies of reimbursement of lost wages of \$5,885.00 plus KiwiSaver contributions and holiday pay on that amount, and compensation of \$20,000 under s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act).<sup>1</sup>

[2] The issue of costs was reserved at counsel for Mr Corrigan's request and a timetable set for lodging an application for costs if they could not be resolved. Mr Corrigan now applies for a costs award.

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<sup>1</sup> *Corrigan v Prime Focus Security Limited (in liquidation)* [2023] NZERA 125.

### **Mr Corrigan's claim for costs**

[3] Counsel says Mr Corrigan has been invoiced and has paid total legal costs of \$20,143.02. At the time of lodging this application for costs, counsel indicated the likely costs of drafting the application for costs was \$1,679.00. A breakdown of how and when the costs were incurred and supporting invoices has been provided.

[4] Mr Corrigan says PFS refused to attend mediation on multiple occasions, offered a "paltry" Calderbank offer and acted non-constructively and unreasonably in regard to all matters. Mr Corrigan seeks a costs award of \$20,000 – namely, very close to on an indemnity costs basis.

[5] Mr Corrigan also seeks reimbursement of the Authority application fee of \$71.56.

### **No response from PFS**

[6] As noted in the Authority's earlier determination, the liquidator for PFS consented to the Authority matter continuing. PFS did not lodge a statement in reply nor did it take any part in the Authority investigation meeting. In keeping with that, the liquidator has not responded to Mr Corrigan's application for costs.

### **Timeline relevant to costs**

[7] On 4 May 2022 Mr Corrigan's counsel sent PFS' advocate (the advocate) a monetary offer by email. That offer has not been disclosed to the Authority on the basis it was without prejudice, so it cannot be assessed for its impact on costs. On the same date counsel wrote separately to the advocate by way of a lengthy letter addressing various matters including the status of Mr Corrigan's employment as a permanent employee, the allegations against him, the disciplinary process followed by PFS, and advising of Mr Corrigan's view that he had no choice but to resign. The letter also sought advice from PFS as to whether it was willing to attend mediation.

[8] On 17 May 2022 Mr Corrigan's counsel again wrote a further lengthy letter to PFS, among other things raising personal grievances. The letter refers to the advocate advising on 5 May 2022 that PFS declined to attend mediation. Although the Authority does not appear to have been provided direct confirmation of this, it appears likely PFS had earlier declined to attend.

[9] On 17 May 2022, the advocate emailed counsel offering Mr Corrigan \$1,500 in compensation for hurt and humiliation and \$500 plus GST in costs upon provision of an invoice, on a without prejudice save as to costs basis.

[10] On 18 May 2022 Mr Corrigan responded via counsel acknowledging receipt of the emailed offer and again requested confirmation whether PFS agreed to attend mediation. On the same date, the advocate replied saying PFS did not agree to attend mediation. Mr Corrigan subsequently rejected PFS' offer, advising he would proceed with drafting and lodging a statement of problem with the Authority, including seeking costs. Counsel further advised her instructions were that in the interests of stress and cost, Mr Corrigan would not engage in communications with PFS:

...unless it is in regard to a fair, reasonable and constructive without prejudice offer and/or an agreement to attend mediation; and  
2. This is the final correspondence with PFS in regard to this without prejudice save as to costs discussion with PFS, therefore it is concluded.

[11] A statement of problem was then lodged on 27 June 2022. It stated PFS had refused to attend mediation, but Mr Corrigan was still open to attending it. The statement of problem was served on PFS via its director who on 28 June 2022 advised it was being forwarded onto PFS' "lawyer". Any statement in reply was due to be lodged on 12 July 2022, but none was lodged. When contacted by the Authority, on 15 July 2022 PFS' director advised its "lawyer" would be "in touch in due course". No statement in reply was ever lodged.

[12] On 5 September 2022 the Authority contacted the parties including PFS' director to arrange a case management conference on 29 September 2022, for the purposes of arranging an investigation meeting. On 6 September 2022 the advocate responded asking if the parties would be directed to mediation. The Authority responded indicating mediation would be a matter discussed at the conference.

[13] The Companies Register confirms on 7 September 2022, by special resolution, PFS' shareholder resolved to place it in liquidation.

[14] On 23 September 2022 the advocate advised the Authority that PFS had been placed in liquidation and Mr Corrigan would require permission from the liquidator to continue this matter. As noted, consent to continue the matter was later granted by the

liquidator, but they chose not to take part in the investigation meeting in December 2022.

[15] Following the issuing of the Authority's earlier determination, on 15 March 2023 counsel wrote to the liquidator of PFS on a "without prejudice save as to costs" basis that he was prepared to accept \$6,000.00 as payment for costs. The offer was accompanied by an indication that if the offer was not accepted, Mr Corrigan would be seeking a costs uplift of \$15,000. Counsel says the liquidator did not reply by her deadline set of 17 March 2023.

### **Costs principles**

[16] 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.<sup>2</sup>

[17] Costs are not to be used as a punishment, are discretionary and awards made are consistent with the Authority's equity and good conscience jurisdiction. Of relevance in this matter is the principle that costs will be modest. The Employment Court observed at [47]:

... we urge representatives of parties to be conscious of the costs that are accumulating as a matter proceeds. Cases should be approached economically and in a way that is likely to leave a successful party with a satisfactory outcome. There is an overall need to ensure that costs being incurred are reasonable in the light of the amount that is likely to be recovered as remedies and costs from the Authority.

[18] The Authority normally adopts a notional daily tariff based approach to costs. The current notional daily tariff is \$4,500 for the first day of an investigation meeting. The notional daily tariff is then adjusted to reflect the particular circumstances of each case.

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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] NZEmpC 135.

## **Costs analysis**

[19] Mr Corrigan was the successful party. It is usual that costs will follow the event and the unsuccessful party will be required to make a contribution towards the successful party's costs.

[20] Actual investigation meeting time was just over a half day. The Authority assesses the starting point to be \$2,500.00 being the relevant portion of the daily tariff.

[21] The Authority considers it appropriate in all the circumstances for a costs award to be made despite the liquidation status of PFS. I am satisfied the way in which PFS, via its advocate, approached the employment relationship problem likely incurred additional unnecessary costs to Mr Corrigan. PFS' emailed offer of 17 May 2022 proved to be woefully inadequate in light of the Authority's ultimate finding on the appropriate quantum of compensation. PFS' earlier refusal to attend mediation, and latter choice not to engage meaningfully with the Authority process meant the parties did not attend mediation prior to its liquidation. The only way for Mr Corrigan to resolve his grievance was by way of an application in the Authority. In saying that, it is not appropriate to award Mr Corrigan the level of costs he is seeking. Further, I am not confident that this matter was approached as economically as possible, particularly given it was not complicated and was undefended.

[22] Taking into account all relevant factors, an increase to the proportion of the daily tariff amount is warranted. Mr Corrigan should be awarded \$6,000 in costs.

## **Conclusion**

[23] Prime Focus Security Limited (in liquidation) is ordered to pay Nathan Corrigan \$6,000 as a contribution to his costs and \$71.56 (being the Authority application fee) within 21 days of the date of this determination.

Sarah Blick  
Member of the Employment Relations Authority