

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2023] NZERA 261  
3159264

BETWEEN                      ELLIE SHENTON  
Applicant

AND                              THE BIG CLEAN CHARITABLE  
TRUST and WOFO LIMITED  
Respondents

Member of Authority:       Philip Cheyne

Representatives:            David Cain, advocate for the Applicant  
Diccon Sim, counsel for Wofo Limited

Submissions Received:     1 May & 12 May 2023 from the Applicant  
1 May & 15 May 2023 from the Respondent

Date of Determination:     24 May 2023

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] Ms Shenton claimed that The Big Clean Charitable Trust and Wofo Limited were jointly her employer at the time of her dismissal, so were liable for her personal grievance claim.

[2] It is not necessary to set out the connections between the Trust and Wofo Limited, but they were always separate legal entities.

[3] In my determination dated 17 April 2023<sup>1</sup> I found Ms Shenton had been employed by The Big Clean Charitable Trust, but not by Wofo Limited. I awarded remedies against The Big Clean Charitable Trust and dismissed Ms Shenton's claims against Wofo Limited. Costs were reserved. I now have submissions for Ms Shenton and for Wofo Limited.

[4] Ms Shenton seeks costs on a daily tariff basis but did not identify whether she seeks an order jointly against both respondents, or which entity if only one.

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<sup>1</sup> *Shenton v The Big Clean Charitable Trust and Wofo Limited* [2023] NZERA 184.

[5] Counsel is now instructed by Wofo Limited. Wofo Limited seeks an order of costs against Ms Shenton, on the basis that the company was successful in defending the claim against it. The Trust did not lodge any submissions.

[6] The Trust gained body corporate status by effect of registration under the Charitable Trusts Act 1957, but was dissolved in accordance with s 26 of that Act in February 2022. That date was after the claim had been commenced in the Authority, but before any significant steps had been taken to investigate the claim. The dissolution did not prevent the proceedings against the Trust from continuing.

[7] I am told that the Trust was without funds. I am also told that the legal costs incurred by the Trust were all met by the company. Counsel has provided supporting invoices for work from May 2022, all directed to the company. The invoices do not distinguish between work required for the Trusts defence and work required for the company's defence.

#### **Ms Shenton is entitled to costs against the Trust**

[8] I must deal with the issue of costs regarding the two respondents separately. They are legally different entities and there were different outcomes.

[9] Ms Shenton was successful in her claim against the Trust and is entitled to costs against the Trust, on the application of ordinary principles.

[10] The investigation meeting took a little less than a full day, but written submissions were provided later by agreement. Further information was provided afterwards at my request. Ms Shenton relies on the Authority's standard daily tariff approach and seeks \$4,500.00 plus \$71.56 as a disbursement to cover the lodgement fee. The Trust has not replied. The claim is appropriate. There will be an order requiring the Trust to pay these amounts as costs.

#### **The company is entitled to costs against Ms Shenton**

[11] The company established its defence that it was not Ms Shenton's employer and her claim against it was dismissed. On ordinary principles, it is entitled to costs against Ms Shenton.

[12] The company seeks costs of \$4,500.00 based on the daily tariff.

[13] The difficulty with applying the standard daily tariff approach to fixing costs for the company is that most of the Authority's investigation was devoted to the issue of justification for the dismissal. The issue of the employer's identity turned on a few factual disputes and consideration of legal principles, within limited compass.

[14] That difficulty leads me to depart from the application of the daily tariff approach. The company is entitled to costs on a reasonable contribution basis.

[15] The invoices do not distinguish between legal work for the Trust and legal work for the company. The company's decision to fully fund the cost of the Trust's justified dismissal defence without separate accounting, means that the invoices provide no assistance to assess the costs reasonably and necessarily incurred by the company in its defence.

[16] The company was not legally represented until May 2022. Steps required before then are not presently relevant. The company then had to participate in a brief case management conference, prepare and lodge limited evidence to answer the allegation that it was the employer, participate to a limited extent in the investigation meeting, provide brief submissions and then deal with its claim for costs.

[17] I am mindful that costs in the Authority should be modest. I fix \$500.00 as a reasonable contribution to the company's costs reasonably and necessarily incurred to establish that it was not Ms Shenton's employer.

### **Summary and orders**

[18] Ms Shenton is entitled to costs against the Trust on a daily tariff basis. The company is entitled to costs against Ms Shenton on a reasonable contribution basis.

[19] The Big Clean Charitable Trust is to pay costs to Ellie Shenton of \$4,571.56.

[20] Ellie Shenton is to pay costs to Wofo Limited of \$500.00.