IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE

[2024] NZERA 392
3207439

BETWEEN	ROWENA MOANA BEATON Applicant
AND	THE CHIEF EXECUTIVE OF ORANGA TAMARIKI – MINISTRY FOR CHILDREN Respondent

Member of Authority:	Philip Cheyne
Representatives:	Liz Lambert and Karen Glass, advocates for the Applicant Joseph Perrott, counsel for the Respondent
Submissions Received:	7 May 2024 from the Applicant 8 March 2024 from the Respondent
Date of Determination:	2 July 2024

COSTS DETERMINATION OF THE AUTHORITY

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[1] Rowena Beaton applied to the Authority seeking compensation for personal grievance claims and penalties and exemplary damages for breach of contract claims against Oranga Tamariki as her employer.

[2] In an earlier determination Ms Beaton's claims were dismissed and costs were reserved. I now have submissions from both parties. This determination resolves the issue of costs.

Costs determined despite a challenge

[3] Ms Beaton has lodged a challenge to the earlier determination and asks that costs remain reserved.

[4] The Authority's usual practice is to finalise costs, even if a party challenges the earlier determination. That enables the Court to resolve all aspects of the employment relationship problem originally brought to the Authority.

Costs follow the event

[5] The Authority has a discretion to order any party to a matter to pay another party such costs and expenses as it thinks reasonable. The discretion must be exercised in a principled manner, not arbitrarily. The starting point is that costs follow the event, so that the successful party is entitled to costs against the unsuccessful party.

[6] Ms Beaton submits that the principle applies only to courts and cases on appeal. I am referred to *Manukau Gold Club Inc v Shoye Venture Ltd*.[1]

[7] The passage relied on by Ms Beaton cites the Court of Appeal (Civil) Rules that the party who fails with respect to an <u>appeal</u> should pay costs to the party who succeeds (my emphasis). The Rule applied in that case because the matter concerned an appeal to the Court of Appeal.

[8] However, the general principle is set out just before the passage relied on by Ms Beaton:

> *A fundamental principle applying to the determination of costs in all the general courts in New Zealand is that costs follow the event.*

[9] The long-standing application of the general principle in the Authority is well supported by precedent. For example, the Employment Court affirmed the Authority's approach that costs generally follow the event in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*.[2]

[10] In the present case, Oranga Tamariki succeeded. In the absence of a compelling reason, it would be entitled to costs.

[11] Ms Beaton submits that costs should lie where they fall. I am referred to several judgments to support the submission that the practice of courts in cases involving COVID-19 vaccinations has been to let costs lie where they fall for public interest reasons. The

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[1] *Manukau Gold Club Inc v Shoye Venture Ltd* [2012] NZSC 109 at [8].
[2] *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808.

Employment Court referred to several judgments from the general courts in its judgment in *GF v OO*.[3] The Employment Court concluded in that case that it was in the broader interests of justice to let costs lie where they fall. The court was persuaded that it was in the interests of public sector organisations for cases involving COVID-19 and employment rights and obligations to come before the Court without unnecessary impediment to enable clarity for affected workers and employers.

[12] The particular circumstances in *GF* do not arise here. There was no application to the Authority to remove the proceedings and no application for special leave to the Employment Court. The present case turned on rights and obligations as between Ms Beaton and Oranga Tamariki, not wider public interest issues.

[13] There is no good reason to depart from the usual approach that costs should follow the event.

Assessing costs

[14] The Authority often fixes costs by reference to a daily tariff. The investigation meeting took a single day. Oranga Tamariki seeks costs of $4,500.00, the daily tariff rate for a one-day investigation meeting.

[15] Oranga Tamariki was represented by in-house counsel. However, that alone does not disentitle it to a contribution towards the costs incurred by the employment of in-house counsel.[4] It is appropriate here to allow costs in accordance with the Authority's tariff.

[16] Oranga Tamariki seeks disbursements based on travel and accommodation costs for in-house counsel. A costs award against an unsuccessful party usually does not extend to travel and accommodation expenses if the successful party chooses an out-of-town representative. Oranga Tamariki's in-house counsel is Wellington based, but it could have engaged local counsel rather than in-house counsel. I decline to include travel and accommodation expenses in the order to be made against Ms Beaton.

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[3] *GF v OO I[2022] NZEmpC 1.*
[4] *Dumolo v Lakes District Health Board* [2014] NZEmpC 40.

[17] Ms Beaton submits that she is entitled to costs against Oranga Tamariki because she succeeded on the issue that her personal grievances had been raised within time, contrary to Oranga Tamariki's position. Costs of at least half a day on the daily tariff are sought.

[18] I decided not to investigate that issue as a preliminary matter as all the evidence had to be considered regardless, given Ms Beaton's overlapping claims for penalties and exemplary damages. Considering the Authority's investigation overall, Ms Beaton was not the successful party so is not entitled to any costs.

Summary and orders

[19] Costs in the Authority should be finalised now, not deferred.

[20] Ms Beaton is to pay the Chief Executive of Oranga Tamariki – Ministry For Children costs of $4,500.00 no later than Tuesday 30 July 2024.

Philip Cheyne
Member of the Employment Relations Authority