

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 436
3216499

BETWEEN	BELLE GOODIN Applicant
AND	EMYM LIMITED (TRADING AS LITTLE HEADQUARTERS) Respondent

Member of Authority:	Nicola Craig
Representatives:	Robert Morgan, advocate for the applicant Peter Kiely, counsel for the respondent
Submissions (and further information) received:	31 May, 26 June and 2 July 2024 from the applicant 19 June 2024 from the respondent
Date of determination:	22 July 2024

COSTS DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] A determination was issued finding that Belle Goodin was unjustifiably dismissed by EMYM Ltd (EMYM).¹ She was awarded \$1,875 gross lost wages along with holiday pay and Kiwisaver contribution, as well as \$12,000 compensation.

[2] The parties were encouraged to resolve any issue of costs between themselves.

[3] Ms Goodin applied for costs. The time for EMYM to lodge its costs submissions expired. EMYM was not previously legally represented. The Authority then received

¹ *Belle Goodin v EMYM Ltd (trading as Little Headquarters)* [2024] NZERA 305.

notification that EMYM had obtained representation and was challenging the determination.

[4] However, there was no objection to the Authority proceeding to determine the costs question, as usually occurs in such situations.

Submissions

[5] Submissions on behalf of Ms Goodin seek costs based a proportion of the daily tariff, as the meeting did not take a full day. Costs in the vicinity of \$3,000 are said to be not unreasonable.

[6] Given that the time had expired, no formal submissions were received for EMYM. Comment was made that no detailed information or invoices had been provided on Ms Goodin's behalf, with confirmation that costs have been invoiced or incurred seen as appropriate.

[7] An invoice to Ms Goodin was then provided to the Authority by her representative. It specified the time incurred for particular work and an hourly rate. A fee of \$4,260.75 including GST was invoiced. It includes time for the preparation for and attendance at mediation.

Costs discussion

[8] The Authority has the power to award costs.² This power is discretionary and is to be used in a principled manner. In *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* the principles guiding the Authority's approach to costs are described as including:

- 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;

² Employment Relations Act 2000, Schedule 2, cl 15.

- Awards will be modest;
- Frequently costs are based on a notional daily tariff.³

[9] The starting point is the daily tariff rate for this matter. The daily tariff for a one-day investigation meeting is \$4,500. This meeting went into the early afternoon. The invoice included mediation related time for which costs are not usually obtainable. Given the length of the meeting, the invoice and the fact Ms Goodin has sought in the vicinity of \$3,000, I conclude an award of \$3,000 is appropriate.

[10] Within 28 days of the date of this determination EMYM is to pay Ms Goodin:

- \$3,000.00 as a contribution to her costs; and
- \$71.56 for the Authority's filing fee.

Nicola Craig
Member of the Employment Relations Authority

³ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808, confirmed in *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135.