

**Attention is drawn to the non-publication order in AA 273/08 relating to the names of the parties and any other information that might identify them.**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 273A/08  
5105590

BETWEEN                      A  
   Applicant  
  
AND                                B  
   Respondent

Member of Authority:        Yvonne Oldfield  
  
Representatives:             Michelle Clark for Applicant  
   David Patten for Respondent  
  
Submissions received:        28 August 2008, 29 August 2008.  
  
Determination:                30 September 2008

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     In a determination dated 1 August 2008 I concluded that Mr A's resignation from his job amounted to an unjustified constructive dismissal. I found that his contribution to the situation that gave rise to his personal grievance was 25%. After taking contributory conduct into account I awarded compensation of \$6,000.00. There was no award for lost earnings because Mr A did not provide evidence to show that he had

[2]     lost earnings as a result of the personal grievance.

[3]     I reserved the issue of costs and have now received submissions from both parties as follows.

**Costs Submissions**

[4]     The applicant through Counsel advises that the Applicant's costs are \$12,127.00 plus disbursements. Ms Clark argues for full indemnity costs or at least a

substantial contribution to costs on the basis that otherwise, the award to the Applicant may become nugatory.

[5] For the Respondent Mr Patten accepts that the Respondent will be expected to make a contribution to the Applicant's costs but says that there is nothing in this case that should cause the Authority to move outside the usual principles in considering the matter of costs. He noted that the Respondent's view was that this was not a complex case, factually or legally, and there were no significant credibility issues for the Authority to consider. In addition he noted that two of the four issues before the Authority were decided in the Respondent's favour and the remedies were reduced by 25% for contributory conduct.

### **Determination**

[6] I accept Mr Patten's submission that this case was neither legally nor factually complex and that there is nothing in it to indicate that the Authority should depart from its usual approach to costs.

[7] I have also weighed Ms Clarke's submission that Mr A's award may become nugatory, but note that the fact that Mr A was not wholly successful in his claim has impacted on the level of remedies recovered.

[8] This employment relationship problem required a two day investigation meeting. In all the circumstances and in line with costs decisions for other similar investigations I consider that a reasonable contribution to Mr A's costs would be the sum of \$3,000.00 per day of investigation, plus disbursements.

[9] **The respondent, B, is ordered to pay to Mr A the sum of \$6,000.00 plus disbursements, as a contribution to his costs.**

Yvonne Oldfield

Member of the Employment Relations Authority