

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Wendy Apaapa (Applicant)  
**AND** Whitehouse Entertainment Limited (Respondent)  
**REPRESENTATIVES** Jo Douglas, Counsel for Applicant  
Philip Kotze, Advocate for Respondent  
**MEMBER OF AUTHORITY** Dzintra King  
**MEMORANDA RECEIVED** 7 July 2006 for Applicant  
No memorandum from Respondent  
**DATE OF DETERMINATION** 15 August 2006

**DETERMINATION OF THE AUTHORITY**

The applicant was successful in her claim and now seeks costs.

The principles applicable to an award of costs in the Authority have been set out in PBO Ltd (formerly Rush Security Ltd) v Da Cruz, unreported, AC2A/05, 9 December 2005. The Full Court set out a number of principles including:

- There is a discretion as to whether costs are awarded and the amount of the award;
- The discretion is not to be exercised arbitrarily;
- Costs are not to be used punitively;
- The Authority can consider whether all or any of the parties' costs were unnecessary or unreasonable;
- Costs generally follow the event;
- Awards will be modest;
- Frequently costs are judged against a daily notional rate;
- The nature of the case can influence costs.

Awards in the Authority are generally in the vicinity of \$1000 to \$3000 per day. Ms Douglas submitted that an award at the higher end of the scale should be considered given that the respondent had failed to agree to mediation at an early stage thereby putting the applicant to greater expense.

The applicant's fees total \$8,640 plus disbursements of \$323.42. Those costs were incurred from 16 November 2005 to 29 June 2006 and include attendances at mediation. Mediation costs cannot be taken into account. Ms Douglas sought an award of \$4,000.

The respondent brought an unsuccessful claim against the applicant, which was heard at the same time as the applicant's claim. This claim put the applicant to greater expense than was necessary. It

was necessary for me to arrange to interview a further witness as a result of the respondent's claim and then to give both parties an opportunity to comment on his evidence.

There is no reason why costs should not follow the event. Ms Apaapa is entitled to a reasonable contribution to her costs.

The respondent is to pay the applicant the sum of \$3,000.

Dzintra King  
Member of Employment Relations Authority