

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

CA 69B/08
5070207

BETWEEN STEPHANIE ATKINSON
Applicant

AND SUTTONS MOSS LTD
Respondent

Member of Authority: Philip Cheyne

Representatives: Stephanie Atkinson in person
Linda and Les Sutton in person

Submissions received: 27 July and 28 July 2008 from the Applicant
27 August 2008 from the Respondent

Determination: 28 August 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] In determinations dated 15 May 2008 and 4 July 2008 I upheld and then quantified Ms Atkinson's claims against Sutton's Moss in respect of wages and holiday pay. Costs were reserved for this later determination following an exchange of submissions.

[2] The usual approach is for a successful party to receive a modest award on contribution to legal costs properly incurred in the proceedings. However, Suttons Moss says that Ms Atkinson should not be awarded costs because she won only part of her case. Indeed it is suggested that Suttons Moss could be awarded costs for their successful defence.

[3] Neither party was legally represented at the investigation meeting but both had instructed counsel who were involved in lodging statements of problem and reply and a directions conference. I have been provided with a copy of Ms Atkinson's invoice from counsel. Ms Atkinson also had some legal advice from a different lawyer prior to the commencement of these proceedings. To support the claim for costs incurred

prior to the commencement of the proceedings Ms Atkinson has apparently arranged for the solicitor to send a copy of her invoice to the Authority. That material has not yet been received. There has been a reasonable opportunity for Ms Atkinson to provide (or arrange) relevant material. I will conclude this matter now based on the information to hand.

[4] Ms Atkinson established a personal grievance, recovered arrears of wages and holiday pay and proved a breach of the Employment Relations Act 2000. In the circumstances no penalty was awarded for the breach, grievance remedies were not as extensive as sought and less arrears were recovered than claimed. However, by any measure, Ms Atkinson was the successful party. I reject the submission by Suttons Moss that it should be awarded costs and that Ms Atkinson should not.

[5] Based on the available information, the relevant legal costs incurred by Ms Atkinson were \$1,125.00 in legal fees and \$70.00 for a lodgement fee. Suttons Moss is to pay Ms Atkinson \$750.00 as a contribution towards her legal fees and \$70.00 to reimburse her for the lodgement fee.

Philip Cheyne
Member of the Employment Relations Authority