

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Andrew Ayers (Applicant)

AND Ogilvy New Zealand Limited (formerly Advertising Works
Ogilvy Limited) (Respondent)

REPRESENTATIVES Justine O'Connell, Advocate for Applicant
Chris Patterson, Counsel for Respondent

MEMBER OF AUTHORITY Leon Robinson

SUBMISSIONS RECEIVED 8 November 2006
14 November 2006

DATE OF DETERMINATION 17 November 2006

DETERMINATION OF THE AUTHORITY AS TO COSTS

The Authority determines that:-

Ogilvy New Zealand Limited (formerly Advertising Works Ogilvy Limited) is ordered to pay to Andrew Ayers the sum of \$3,000.00 as a contribution to costs.

[1] By a Determination dated 20 October 2006, I determined that Mr Andrew Ayers ("Mr Ayers") had been unjustifiably dismissed. I made various orders to settle the personal grievance. I also invited the parties to agree costs but they have been unable to do so. Mr Ayers now makes application for costs.

[2] Ms O'Connell lodged a memorandum on 8 November 2006. That memorandum advises Mr Ayers' fees of representation in the sum of \$12,693.46 plus GST. A contribution of \$4,000.00 plus GST is sought. It is only GST exclusive portions that are relevant.

[3] Mr Patterson by memorandum lodged on 14 November 2006, submits that Mr Ayers ought only be entitled to a contribution of one third his actual costs. Counsel says the sum sought is not reasonable in the circumstances and without actual evidence or a breakdown, the costs sought are arbitrary. Counsel submits this is an appropriate case for a modest award not exceeding \$500.00 or alternatively, on a tariff based approach an award of \$2,000.00 is a fair assessment of the reasonableness of costs for a one day investigation meeting.

[4] Mr Patterson correctly notes the investigation meeting proceeded over one day. He is also correct to be concerned that in the absence of a breakdown of costs, it is not possible to discern the impact of mediation, an amended statement of problem, witness expenses, and a withdrawn application for interim reinstatement on the costs incurred.

[5] I do not consider there is anything unusual in this case or any particular factor that warrants any departure from the Authority's conventional approach to costs. In exercising its discretion to award costs, the Authority adopts a principled approach taking into account relevant matters and taking no account of irrelevant ones. Generally, awards of costs in the Authority are modest consistent with the Authority's approach to investigations.

[6] In this instance, costs shall follow the event. Having regard to the matters set out in paragraph [4] above, I reduce the contribution sought by an award on a contribution basis in the amount of \$3,000.00.

[7] Exercising my discretion on a principled basis, **I order Ogilvy New Zealand Limited (formerly Advertising Works Ogilvy Limited) to pay to Andrew Ayers the sum of \$3,000.00 as a contribution to costs.**

