



determined “on the papers” any award of costs should reflect this. Finally, it is submitted for the applicant that she does not have the financial ability to meet any award of costs. This is because she is currently unemployed and she has significant mental health issues. It is said that Ms Blakeney-Williams has no assets and she has debts of approximately \$13,000, albeit no evidence of this has been provided. The applicant submits that costs should lie where they fall.

[4] The matters before the Authority involved two issues. Firstly, the applicant claimed that she was “a person intending to work” as defined by s.6(b)(ii) of the Employment Relations Act 2000 (the Act). And then, a preliminary matter arose. That is: the applicant had failed to raise a personal grievance within the 90 days period required by s.114 of the Act. This preliminary matter was determined in favour of the respondent when it was found that exceptional circumstances did not exist, pursuant to s.115 of the Act.

[5] The Authority has some empathy for the position of the respondent in that she was put to some expense in regard to preparing a defence to the rather nebulous claims of the applicant. It has to be said that the evidence, regarding both of the above matters, revealed that the applicant’s arguments were substantially lacking in merit. However, while the Authority can award full indemnity costs in rare circumstances, this case does not qualify for such.

[6] The Authority has considerable discretion in regard to its jurisdiction to award costs to a successful party. The question then arises: What is a reasonable award of costs in the circumstances?

[7] The preliminary matter was decided “on the papers” hence the parties were spared the added expense of preparing for and attending an investigation meeting. Nonetheless, the preparation required by the respondent was such that I assess it is equivalent to that required for a half day investigation meeting; which, applying the current costs regime adopted by the Authority, would warrant an award of \$1,750. The Authority then assesses whether there are any particular factors that warrant an increase or reduction in that “base rate”. On the one hand, it is obvious that the

applicant's case was lacking in any real merit and the respondent should not have had to incur the expenses involved. On the other hand, the applicant says (via submissions only) that she is, effectively, impecunious. But there is no real evidence before the Authority as to her current financial situation; i.e. bank statements, credit card statements or independent verification.

### **Determination**

[8] Assessing all of the circumstances, I conclude that pursuant to clause 15 of the Second Schedule of the Employment Relations Act 2000, Ms Blakeney-Williams shall pay to Ms Regan O'Brien, the sum of \$2,000.00 as a contribution toward the costs incurred by Ms O'Brien.

**K J Anderson**  
**Member of the Employment Relations Authority**