



Employment Court of New Zealand

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C v Sovereign Services Limited WC 34/07 [2007] NZEmpC 173 (18 December 2007)

Last Updated: 1 April 2008

IN THE EMPLOYMENT COURT

WELLINGTONWC 6/08WRC 14/06

IN THE MATTER OF a challenge to a determination of the Employment Relations Authority

AND IN THE MATTER OF an application for costs

BETWEEN JENNIFER MARY CROOK
Plaintiff

AND SOVEREIGN SERVICES LIMITED
Defendant

Hearing: Written submissions received 29 February and 7 March 2008

Judgment: 19 March 2008

COSTS JUDGMENT OF JUDGE C M SHAW

[1] The defendant company successfully defended the plaintiff's challenge to an Employment Relations Authority determination which found that she had not been constructively dismissed and that the defendant had not breached its health and safety obligations to her.

[2] The Authority made an order for costs and disbursements against the plaintiff which has not been challenged. The plaintiff paid the total sum awarded of \$12,207.71 into Court pending the outcome of the plaintiff's claim. Those costs are now to be released to the defendant.

[3] The defendant has applied for costs relating to the challenge. Its actual costs for two counsel with appropriate disbursements, including an expert witness, came to \$166,519.34. Two-thirds of that amount is \$111,012.89.

[4] In a memorandum to the Court, Ms Fleming has helpfully advised that under scale 2B of the High Court Rules the appropriate recovery usually would have amounted to \$65,200.

[5] Miss Buckett also filed a memorandum of costs accompanied by an affidavit of the plaintiff which updates the Court on her present personal and financial situation.

[6] I accept Ms Fleming's submission that this was a complex case. It required an unusual number of interlocutory applications to deal with disclosure and other pre-trial matters. The fact that the case took only 5 days to hear is a tribute to all counsel given the indications of the volume of evidence that was originally to be called. In part, however, it was also due to the unavailability of some of the plaintiff's witnesses. In her affidavit she said she believed that she had a great deal more support for her perspective from her previous co-employees than she really had and this realisation was devastating to her.

[7] In assessing an appropriate level of costs, ability to pay is a relevant factor. In this case the plaintiff's ability is impacted by her ongoing disability which causes her to be still unemployed and receiving payments under her disability income protection insurance which is approximately one-third less than her pre-disability earnings. She has a mortgage and usual outgoings as well as significant credit card debt.

[8] The plaintiff says that because of a combination of her illness and current financial position she is unable to meet the award of costs sought without significant effects on her rehabilitation and ability to remain living in her current home.

[9] Of the well settled principles to be applied in considering applications for costs,^[1] this case requires, in particular, consideration of what award of costs and expenses would be reasonable in all the circumstances.

[10] Although costs will follow the event as the plaintiff's case was entirely and, to a large extent, predictably unsuccessful, I have regard to the particularly unfortunate circumstances of the plaintiff. Her illness was triggered by events at work and it was apparent from her evidence that the nature of her illness contributed to her unwavering belief that her employer should be held responsible. Each unsuccessful stage of her attempt to be vindicated has exacerbated her illness. She now accepts the decision of the Court that the legal threshold required to be met by her has prevented her claim from succeeding. There is also a considerable imbalance of comparative financial resources between the parties. The plaintiff's former employer is a multi-national insurance company while she is receiving payments under her disability insurance scheme. This has reduced her standard of living.

[11] The award of costs will be significantly reduced from what would ordinarily be awarded to take these factors into account. Such a reduction is no reflection on the conduct of the case by counsel for the defendant but recognises the vulnerable situation the plaintiff is in.

[12] The plaintiff is to pay \$25,000 as a contribution to the defendant's costs plus \$2,945.50 disbursements for its expert witness.

**C M SHAW
JUDGE**

Judgment signed at 11.45am on 19 March 2008

[1] *Reid v New Zealand Fire Service Commission* [1995] NZEmpC 192; [1995] 2 ERNZ 38