

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Judy Carelse (Applicant)
AND YMCA, Wellington Inc (Respondent)
MEMBER OF AUTHORITY P R Stapp
SUBMISSIONS 7, 11 & 21 February 2005
DATE OF DETERMINATION 9 March 2005

COSTS DETERMINATION OF THE AUTHORITY

1. This application follows costs being reserved by the Authority on 6 January 2005. The usual principles apply including not punishing the unsuccessful party. The applicant was successful. She was put to the cost of an investigation determination unnecessarily given the issues to resolve the employment relationship problem and that the key witness for the respondent was also its advocate with an important interest in regard to her credibility. I have noted that during the time the respondent has taken legal advice. Both parties have experienced difficulties. Both parties tried to save costs by attending mediation services before the investigation process.
2. The respondent accepted that some costs need to be paid but it should be limited to \$3,000.
3. The applicant, through her representative has claimed the sum of \$10,000 plus GST and \$70 disbursements (being 66% of the actual solicitor client costs reduced to \$15,367 plus GST and disbursements) without receipts and invoices. The reduction involved junior counsel's time at the Authority's investigation meeting and mediation. There is no accounting for what was actually involved in the preparation time.
4. GST is not included in Authority costs. Also I have to assess the preparation as it related to the investigation, which I have done from the papers and documents and statements and

written submissions produced. The applicant reasonably obtained representation and much of the preparation was carried out by junior counsel.

5. The relevant preparation assisted the process and it was not unreasonable for the applicant to have representation during the investigation meeting (although the respondent did not to save costs). In this regard I assess the junior counsel's rate of \$180 per hour as entirely reasonable to assess a contribution for costs in favour of the applicant.
6. The nature of the preparation involving relevant documents, statements and submissions and the length of the investigation meeting are two other factors in guiding me. More preparation was involved than ordinarily because of the credibility issues and the direct involvement of the respondent's advocate who had an interest. It was not unreasonable for the applicant to cover the ground since her vindication was an important issue to her.
7. Therefore, I assess total time for preparation to be 2 times the 8 hour investigation meeting relating to the relevant issues. This is \$2,880. Representation on the day for reasonably only one representative (calculated at the lower hourly rate of \$180) in the sum of \$1,440 is reasonable for a contribution to the costs of senior counsel attending considering the nature of the role of representatives in the investigation process and with regard to this matter.
8. I have had regard to the amount received by the applicant to resolve her employment relationship problem. She was entitled to vindication that not only related to the monetary remedies given to her but the finding in favour of her credibility that was an important issue for her. As a matter of principle the monetary remedies (\$14,749.99) should not be totally eroded by her costs and this is a factor to be taken into account, but I have to also take into account the vindication that the applicant wanted to pursue as a matter of importance and her choice of representation, for which the cost is entirely her responsibility and their decision for the amount of work they thought needed to be put in. Since no itemised receipts and invoices have been produced it is entirely appropriate to determine a reasonable contribution towards the applicants costs as above.

9. I therefore order the YMCA Wellington Inc to pay Judy Carelse a contribution towards her costs of \$4,320 and the \$70 filing fee.

P R Stapp
Member of the Authority