

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Jane Carter (Applicant)
AND Southpark Corporation Ltd (Respondent)
REPRESENTATIVES Michael O'Brien, Counsel for Applicant
David Smith, Counsel for Respondent
MEMBER OF AUTHORITY R A Monaghan
MEMORANDA RECEIVED 9 February and 2 March 2006
DATE OF DETERMINATION 4 April 2006

DETERMINATION OF THE AUTHORITY ON COSTS

[1] In a determination of the above matter, dated 29 November 2005, I found Ms Carter was unjustifiably dismissed. Costs were reserved, and the parties have filed memoranda on the matter.

[2] Counsel for Ms Carter relied on an offer of settlement dated 2 September 2005, made without prejudice save as to costs, with terms including –

- (i) \$8,000 pursuant to s 123(1)(b) of the Employment Relations Act 2000;
- (ii) \$5,000 pursuant to s 123(1)(c)(i) of the Act; and
- (iii) costs should lie where they fell.

[3] The offer remained open until 9 September 2005, and counsel says no reply was received.

[4] Counsel also says costs of \$900 (plus GST) plus disbursements of \$77.22 were incurred before 9 September, and costs of \$5,187 (plus GST) and disbursements of \$137.50 were incurred after 9 September. Those costs are remarkably reasonable. Counsel seeks a contribution to them in the sum of \$600 (plus GST) in respect of pre-offer costs (being two thirds of those costs), and \$4,419.60 (plus GST) in respect of post offer costs (being 80% of those costs), plus \$214.72 in disbursements. He says that, had the settlement offer been accepted at the time, Southpark would have paid \$1,449 less than the Authority's award and further cost and expense could have been avoided.

[5] Counsel for Southpark Corporation Limited ("Southpark") refers to the effect of the involvement of a third party, namely Kinetic Consultants, and says that since this problem is now under challenge in the Employment Court no determination should be made as to costs until the challenge has been decided.

[6] However it is usual to determine costs even if a challenge is pending, and when asked to do so. If the parties want to revisit the matter in the Court then no doubt they will be able to.

[7] As for Kinetic's role in the fate of Ms Carter's employment with Southpark, that is a matter between Kinetic and Southpark.

[8] Turning to the assessment of costs, the investigation meeting took less than a full day and proceeded in a straightforward manner. Aside from the existence of the settlement offer, there was nothing about it to suggest a need to depart from the usual range of awards of costs in the Authority. That in turn suggests a contribution of \$2,000 plus disbursements would be appropriate.

[9] Settlement offers by applicants can be taken into account in setting costs.¹ Here the offer was reasonably close to the amount awarded by the Authority, but both parties incurred extra costs in that the matter proceeded through an investigation to a determination. It is appropriate to increase the amount that would otherwise have been awarded, in recognition of that.

[10] Southpark is therefore ordered to contribute to Ms Carter's costs in the sum of \$3,000, plus disbursements of \$214.72.

R A Monaghan
Member, Employment Relations Authority

¹ **PBO Limited v Da Cruz** (AC2A/05, 9 December 2005), at [44]