

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

Determination Number:
WA 50/08
File Number:5052501

BETWEEN GEORGIA CHOVEAUX
 Applicant

AND ACCIDENT COMPENSATION
 CORPORATION
 Respondent

Member of Authority: G J Wood

Representatives: Barbara Buckett for Applicant
 Peter Churchman for Respondent

Submissions received: by 18 April 2008

Determination: 28 April 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] In my substantive determination I concluded that Ms Choveaux was not unjustifiably disadvantaged by any failure of ACC to provide her with a safe and healthy workplace, but that she was unjustifiably dismissed. I ordered that she be paid \$8,000 in compensation and \$1,619.97 gross in lost remuneration.

[2] In support of Ms Choveaux's claim for \$30,000 in costs, Ms Buckett relies on the fact that ACC refused to reinstate Ms Choveaux forthwith (without prejudice to her rights to make further claims and that the safety of the work environment could be addressed once she returned to work), which was declined by ACC, together with personal attacks on the applicant during the whole process and Ms Choveaux's success in her claim for unjustified dismissal.

[3] On behalf of ACC, Mr Churchman was concerned about the delay of eight months in claiming costs. He categorised the letter relied on by Ms Buckett as not a claim to resolve the

matter because the demand for reinstatement was accompanied by a rider that Ms Choveaux reserved her rights to pursue further claims. Accordingly, there was no offer of settlement, because there was nothing that ACC could settle on at that point. He also noted that Ms Choveaux was unsuccessful in her claim for reinstatement and in her claim that ACC had failed to provide her with a safe and healthy work environment. He submitted that the latter was a major aspect of Ms Choveaux's claim and occupied much of the time before the Authority. He also noted adverse findings against Ms Choveaux's evidence and that there was contributory conduct.

[4] Mr Churchman submitted that no detail was supplied in relation to the claim for \$30,000 costs and that this was excessive anyway for a case involving only two days of investigation. He also submitted that in any event there was nothing in the nature of the case that would sustain a claim for indemnity costs. Mr Churchman therefore submitted that costs should lie where they fall, but that if there was to be an award of costs it should only involve an assessment of reasonable costs.

[5] In response Ms Buckett provided details of her costs, which related to taking instructions, mediation and the investigation process.

Determination

[6] It is not for the Authority to judge the level of costs that parties that incur in pursuing claims. The Authority is entitled, however, to consider what a reasonable contribution to costs in a case such as this would be.

[7] This is not a case justifying indemnity costs, or anything like it. In investigation terms only, rather than the subject matter, this was a standard form of investigation. As the matter involved a two day investigation meeting the normal range of costs awarded by the Authority would be in the region of \$4,000 to \$6,000.

[8] I accept Mr Churchman's submissions that there was no offer akin to a *Calderbank* offer made by the application, rather there was a demand for reinstatement while reserving Ms Choveaux's rights to take further action to recover any lost remuneration and other compensation. That is not an offer to settle the matter that ought to be taken into account by the Authority, except to the degree as noted in the substantive determination that ACC should have favourably considered Ms Choveaux's demand to be reinstated at the time.

[9] I note that it is not the practice of the Authority, for sound public policy reasons, to award costs for initial preparation of any claim, or for mediation.

[10] I accept that a lot of the time in the investigation meeting was spent in scrutinising the unsuccessful claim that Ms Choveaux was not provided with a safe and healthy workplace. ACC is entitled to some credit in a costs setting for its success there, but it must also be noted that it was necessary to traverse a lot of this material as background to the later unjustified dismissal. Costs should therefore lie where they fall with respect to that part of the claim.

[11] I make no deduction for the lateness of the claim, but note that the parties are entitled to certainty and that costs applications left this late run the risk in the future of deductions being made as a result of lateness.

[12] In all the circumstances of this case, therefore, I conclude that an appropriate contribution to the applicant's costs is \$3,000.

[13] I therefore order the respondent, the Accident Compensation Corporation, to pay to the applicant, Ms Georgia Choveaux, the sum of \$3,000 in costs.

G J Wood
Member of the Employment Relations Authority