

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Davis Lester Clarke (Applicant)
AND Industry New Zealand (Respondent)
REPRESENTATIVES Brian Spong, Applicant
Susan Hornsby, Respondent
MEMBER OF AUTHORITY Y S Oldfield
SUBMISSIONS RECEIVED 8 August 2005, 27 September 2005
DATE OF DETERMINATION 14 November 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

Employment Relationship Problem

- [1] In June of this year I issued a determination of Mr Clarke's employment relationship problem. There had been two issues: whether a dismissal for incapacity was justified and whether there was an accord and satisfaction between the parties. I found for the respondent in relation to both. The parties have been unable to resolve the issue of costs and I now proceed to determine that issue.
- [2] At an early stage of my investigation into the employment relationship problem I suggested that it might be helpful to deal with the accord and satisfaction issue as a separate preliminary matter. I was not able to obtain the agreement of Counsel to this course and the investigation proceeded on the basis that all matters would be addressed together. This required a day long investigation meeting. I record that it was possible to confine the meeting to one day largely as a result of good preparation by Counsel.
- [3] Ms Hornsby submits that Mr Clarke's grievance should never have got as far as an investigation meeting. She says that the complaint was groundless. She has told me that her client incurred costs of \$13,976.00 plus GST, plus disbursements of \$1,453.75. She said that given the outcome of the case the respondent submits that a contribution to its costs of two thirds is appropriate. The respondent therefore seeks costs of \$9,000.00 plus GST, plus disbursements of \$1,453.75.
- [4] In response, Mr Spong has argued that the costs incurred were high (given that there was nothing novel or unusual about the case) and have not been explained. Mr Spong also notes that the disbursements (which appear to relate to travel costs of respondent witnesses and Counsel) are not reasonable because the investigation was conducted in the location in which the employment took place.

[5] He also notes that two thirds is a high level of contribution and asserts that the Authority should not have to pay more because his case was rejected on an interlocutory point.

Determination

[6] The Authority sees widely varying levels of costs even amongst cases of comparable complexity. I agree that the costs incurred by the respondent here are at the outside edge of what I might expect to see in a case of this type. In the absence of an explanation for this I can only conclude that this level of costs and disbursements is not reasonable.

[7] Nonetheless it is correct that the respondent was wholly successful and is entitled to a reasonable contribution to costs. After taking all the submissions into consideration, and considering levels of costs award in similar cases conducted over a day to a day and a half, I have decided that a reasonable level of costs in this case is \$4,000.00. In the absence of supporting information I make no award for disbursements.

[8] The applicant, Mr Clarke, is ordered to pay the sum of \$4,000.00 to the respondent as a contribution to costs.

Y S Oldfield
Member of Employment Relations Authority