

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Mark Creedy (Applicant)
AND New Zealand Police (Respondent)
REPRESENTATIVES Alex Hope, Counsel for Applicant
Christina Inglis, Counsel for Respondent
MEMBER OF AUTHORITY Dzintra King
MEMORANDA RECEIVED 25 May 2004 from Respondent
27 May and 8 June from Applicant
DATE OF DETERMINATION 6 July 2005

COSTS DETERMINATION OF THE AUTHORITY

The applicant was unsuccessful in his application for leave to have his personal grievance heard out of time. The respondent now seeks costs. Ms Inglis referred me to Victoria University v Alton Lee [2001] ERNZ 305 and Binnie v Pacific Health [2002] 1 ERNZ 438. Binnie is not the proper basis for an award of costs in the Authority.

Ms Inglis said the respondent incurred substantial costs in responding to the leave application. This included the applicant relying on diverse grounds, the need for expert evidence and a number of witnesses, some of whom had to be interviewed by phone after the meeting. The meeting took a full day and the applicant failed to abide by the Authority's timetabling orders which necessitated the deferral of the original meeting. Two days before the meeting an amended application was filed which raised a new matter and was accompanied by an additional supplementary brief and without prejudice correspondence. This required a conference call to have that correspondence withdrawn. A brief for a new witness was filed, this being the first notice the respondent had that this witness was to be called.

The respondent has incurred costs of \$9,000, this figure excluding the cost of second counsel and costs associated with responses to other aspects of the applicant's claim unrelated to the leave application. Disbursements total \$556.85 travel, \$750.00 expert witness fees, \$77.77 tolls and photocopying. The respondent seeks two thirds of the above costs being \$7,324.62.

Mr Hope submitted that the hearing including the 3 conference calls to interview witnesses took no more than a day and that the average award of costs for a one day hearing was around \$1,500.

Mr Hope says that travel costs were not reasonable when the applicant was employed in Auckland and the Auckland Crown Solicitor's Office had the ability to deal with employment matters on behalf of the respondent. The use of the Crown Counsel based in Wellington was simply the respondent's choice. This overlooks the fact that the Investigation was held in Hamilton.

Mr Hope also objected to the respondent's claim for expert witness fees for Mr Schnabel. I do not accept the argument that was mounted to me.

Mr Hope also objected to his client having to contribute to the costs of the witness interviews with three of Mr Creedy's previous legal advisors on the basis that the Authority had decided to hear evidence from those people. While there is a superficial attraction in that argument it was reasonably foreseeable, the application raising evidence relating to his previous dealings with the three people that evidence from them would be required.

Finally, Mr Hope submitted that his client had no resources to pay an award of costs. Subsequent to the hearing he had obtained employment on a salary of \$46,000, owned no real property and had debts of \$150,000 and was paying child support for one child.

A reasonable contribution would be \$2,000 plus \$77.77 in disbursements.

The respondent is entitled to a reasonable contribution to its reasonably incurred costs. I agree with the submissions of the respondent that delays and late alterations added to the respondent's legal costs. I have not been told what the charge out rate of Crown Law is. I have taken it to be \$350.00 per hour. On that basis, allowing for nine hours of hearing time and adopting a multiplier of three, reasonable costs would be \$9,450. I have taken into account the information supplied relating to the applicant's financial status. In all the circumstances, the applicant is to pay the respondent the sum of \$3,000 in costs and all the disbursements sought by the respondent.

Dzintra King
Member of Employment Relations Authority