

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Angela Martins De Aquino (Applicant)  
**AND** David Zimmerman (First Respondent)  
**AND** TF Dental Limited (Second Respondent)  
**REPRESENTATIVES** Angela Martins De Aquino In person  
Melissa Russell, Counsel for First Respondent  
**MEMBER OF AUTHORITY** Leon Robinson  
**DATE OF DETERMINATION** 19 September 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

**Application for Costs**

[1] By a Determination dated 4 April 2005<sup>1</sup>, I determined that the applicant Ms Angela Martins De Aquino did not have an employment relationship with either of the respondents.

[2] The parties were invited to resolve costs between them but they were unable to agree. The representatives have lodged memoranda to assist me in the exercise of the Authority's discretion.

**Costs in the Authority**

[3] It was said in *Harwood -v- Next Homes Limited*<sup>2</sup> and *Graham and Airways Corporation of New Zealand Ltd*<sup>3</sup> that average awards of costs fall between \$1,000.00 and \$1,500.00 for a one-day investigation meeting by the Authority. There was agreement too in those decisions of a trend towards a higher figure of between \$2,000.00 and \$3,000.00. It has also been held that generally, awards of costs in the Authority are modest consistent with the Authority's approach to Investigations. That approach is as described in *Wilson and Grey Power Publishing Co Ltd*<sup>4</sup>.

[4] The principles and rules conventionally applied to applications for costs in traditional adversarial or trial litigation do not fit with the Investigative role of the Authority and the objects of the legislation which establishes it<sup>5</sup>. Those principles and rules continue to remain relevant however and the overall question is to determine what is a reasonable contribution to reasonable costs

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<sup>1</sup> AA118/05

<sup>2</sup> unreported, AC70/03, 19 December 2003, Travis J

<sup>3</sup> unreported, AA39/04, 28 January 2004, Alastair Dumbleton

<sup>4</sup> unreported, AA58/03, 4 March 2003, Alastair Dumbleton. See also the Authority's Determinations in *Beardsley and Campac International Limited* AA39A/01, Yvonne Oldfield and *Henry and Youth Horizons Trust* AA107A/02, Ken Anderson.

<sup>5</sup> *Harwood and Koia -v- Attorney-General*, unreported, AC8/04, 23 February 2004, Colgan J.

incurred. The Authority adopts a principled approach taking into account relevant matters and taking no account of irrelevant ones.

## Determination

[5] The respondents now seek an award of costs of \$5,998.75 comprising disbursements of \$298.75, legal fees for attendances in the Authority of \$3,000.00 and executive time of \$2,700.00. Those costs are incurred by the second respondent T F Dental Limited.

[6] Ms De Aquino replies that costs ought to be apportioned on a corresponding basis as the parties' respective annual incomes. She offers to provide her income details for that purpose.

[7] The respondents succeeded in resisting Ms De Aquino's claims against them. They are entitled to an award of a reasonable contribution to their reasonable costs incurred.

[8] I now assess a notional quantum of reasonable costs. The investigation meeting proceeded over one day. I consider a multiplier of 1.5 should be applied to total hearing time of 9 hours to yield total professional time involved of 13.5 hours. I apply an hourly rate of \$200.00 for counsel that yields a notional sum of reasonable costs of \$2,700.00. Ms De Aquino shall contribute to that sum in the greater proportion by an amount of \$1,500.00. That amount is inclusive of disbursements and I decline to make an award for executive time.

[9] Exercising my discretion on a principled basis, **I order Angela Martins De Aquino to pay to TF Dental Limited the sum of \$1,500.00 as a contribution to costs.**

Leon Robinson

**Member of Employment Relations Authority**