

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Kerry Davis (Applicant)
AND Harbour Inn Fisheries Limited (Respondent)
REPRESENTATIVES Paul Brown, Advocate for Applicant
Michael Guest, Advocate for Respondent
MEMBER OF AUTHORITY Philip Cheyne
SUBMISSIONS – APPLICANT 18 October 2006
– RESPONDENT 27 September 2006
DATE OF DETERMINATION 19 October 2006

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 18 September 2006 I found that Mr Davis had a personal grievance of unjustified dismissal against Harbour Inn Fisheries but declined to award any remedies because of his contribution to the situation giving rise to the grievance. Costs were reserved. I have now received memoranda on costs from both representatives. This determination resolves the disputed question of costs.

[2] Harbour Inn Fisheries seeks indemnity costs amounting to \$5,000.00 against Mr Davis on the basis that he pursued his claim knowing that he had taken his employer's fish which was the allegation that foreshadowed the dismissal. That is a reference to the findings in the original determination that fish was missing and only Mr Davis could have been responsible for that. The argument for Mr Davis is that both sides were found to be at fault: he by the findings about the missing fish and the company by the finding of an unjustified dismissal

[3] In *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*, 9/12/2005, Colgan CJ, Travis & Shaw JJ, AC2A/05 a full bench of the Employment Court set out principles applicable when the Authority is determining costs. In particular, I note that costs should not be used as a punishment or an expression of disapproval of the unsuccessful party. I conclude that this is what the company is urging me to do. The discretion over costs is to be exercised in accordance with principle and not arbitrarily. The standard approach to costs in the Authority is for the successful party to be entitled to a contribution to their legal costs normally assessed by reference to a daily tariff. I see no reason to depart from that approach in the present case.

[4] The company must be seen as the successful party even though its argument that there was no dismissal was rejected. It prevailed against the applicant's claims for compensation.

[5] The investigation meeting lasted about half a day. There was little in the way of documentary evidence and the respondent had two witnesses. The relevant issues were mostly confined to what happened on two days and the respondent's principal witness could have relied in large part on his written statement given to the police shortly after the dismissal on the second day. That statement and a concession in some correspondence made it clear that there had been a dismissal so the respondent's attempts in evidence and submissions to argue otherwise were pointless. In these circumstances, I find that an appropriate award of costs against Mr Davis is \$1,500.00.

[6] Mr Davis is to pay Harbour Inn Fisheries Limited the sum of \$1,500.00 in costs.

Philip Cheyne
Member of Employment Relations Authority