

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Wendy Dickson (Applicant)

**AND** New Zealand Grazing Company Limited (Respondent)

**REPRESENTATIVES** Grant Wilkin, Counsel for Applicant  
Alex Hope, Counsel for Respondent

**MEMBER OF AUTHORITY** Marija Urlich

**SUBMISSIONS** 28 April 2006  
4 May 2006

**DATE OF DETERMINATION** 9 August 2006

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] In a determination dated 7 April 2006 the Authority dismissed the applicant's personal grievance claim and the respondent's counter-claim. At paragraph 46 of that determination the Authority invited the parties to attempt to resolve the issue of costs themselves and if they were unable to do so, to file costs memoranda. The parties advise that they have not been able to resolve the issue of costs and request the Authority move to determine the issue. Subsequent to issuing of the determination the member concerned has taken extended leave. The costs issue has been assigned to me to determine.

[2] Mr Hope submits that the respondent is entitled to costs because the applicant's personal grievance claim was dismissed, the respondent made two offers to settle, these offers were made on a without prejudice save as to costs basis and the respondent's counter-claim took only a short time to hear. He advises that the respondent incurred legal costs of \$19,840.50 (including GST) plus \$513.29 disbursements. Mr Hope submits that a reasonable contribution to the respondent's costs would be \$6,250.00 and has set out a detailed calculation to substantiate this claim

[3] Mr Wilkin submits that costs should lie where they fall. He submits that the Authority should give particular weight to the following in its consideration of costs; neither party was successful with regard to their respective claims, the respondent's counter-claim had little prospect of success, the cross-examination of the applicant took a day of hearing time, an adjournment of the proposed third day was necessary to consider a witness statement filed two days prior.

[3] The relevant terms of the respondent's two without prejudice save as to costs offers are:

- (i) 30 September 2005, \$2,000 compensation;
- (ii) 25 January 2006, \$4,500 compensation,

[5] The investigation meeting covered two and a half days, 27 October 2005, 11 November 2005 and 3 February 2006, following which extensive written closing submissions were filed. The first settlement offer was filed one month prior to the first hearing day and the second eight days prior to the commencement of the third hearing day. The first offer conforms to the

principles of such offers and it is appropriate that it should be a factor in the determination of costs. The second offer was made after the majority of costs had been incurred by the parties and should be given less weight.

[6] It is appropriate that the applicant contribute to the costs the respondent has incurred. A substantial portion of these costs were unnecessary given the outcome of Ms Dickson's personal grievance claim. Based on the information received it is fair to say a third of the hearing time dealt with the respondent's counter-claim, the costs of which I do not accept Ms Dickson should have to make a contribution towards given its lack of success. The assessment period is to cover the remainder of the hearing time, being just over a day and a half. I accept Mr Hope's submission that a usual daily rate for Authority costs is \$2000. Applying this rate to the two day assessment period and adjusting it to reflect a reasonable contribution to costs incurred I set the applicant's contribution to the respondent's costs at \$2500, plus a contribution to disbursements of \$100.

**[7] Wendy Dickson is ordered to pay New Zealand Grazing Company Limited \$2500 as a contribution to its costs plus disbursements of \$100.**

Marija Urlich  
Member, Employment Relations Authority