

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

Determination Number: WA 6A/08
File Number: 5097865

BETWEEN DENISE MARILYN EDMONDS
Applicant

AND ALLIED PETROLEUM (NI)
LIMITED
Respondent

Member of Authority: G J Wood

Representatives: Denise Edmonds on her own behalf
Janet Copeland for the respondent

Submissions received: by 15 April 2008

Determination: 28 April 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] In my substantive determination I found that Ms Edmonds was not unjustifiably dismissed and that the respondent (Allied Petroleum) had not breached its duties of good faith to her.

[2] In clear breach of s.148 of the Act, Ms Copeland's submissions on costs refer to what occurred in mediation. I have not taken into account such comments and have ordered that they be sealed.

[3] Ms Copeland seeks the sum of at least \$24,000 in costs, in reliance on a *Calderbank* offer of \$1,000, the unmeritorious nature of Ms Edmonds' claims, conduct which increased costs unnecessarily (such as that many of the Ms Edmonds' witnesses were not available to attend the investigation meeting) and her unwillingness to resolve costs by agreement.

[4] Ms Edmonds submitted that costs should lie where they fall, or alternatively, should be set at a modest level. She submitted that she had already suffered significant

financial and emotional costs and that she had little option but to represent herself for financial reasons.

[5] This was in many ways a standard claim, involving a one day investigation meeting. As the respondent is South Island based it chose to bring employees from the South Island and to be represented by an Invercargill based lawyer. That is its choice, but not one that the applicant has to meet in a costs setting. Rather, as Allied Petroleum carries on business in the North Island, it must pay the costs of doing so accordingly. One witness, however, Mr Lance King, no longer worked for Allied Petroleum, but was required to attend the investigation meeting as he was a key witness.

[6] The leading case on costs is *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808. The case relied on by Ms Copeland, *Crook v. Sovereign Insurance NZ Ltd* unreported, Shaw J, 19 March 2008, WC608, is not applicable, as it relates to a Court hearing. As was made clear in *Da Cruz*, the assessment of costs in Court proceedings is quite different from those before the Authority.

[7] Given that Ms Edmonds was totally unsuccessful in all her claims, it is not particularly apposite that she was offered \$1,000 to settle costs. Being unsuccessful, she must have expected to pay a reasonable contribution to Allied Petroleum's costs in any event.

[8] Ms Edmonds is not to be penalised for representing herself, but on the other hand there is no evidence that she cannot afford to pay any award made in Allied Petroleum's favour.

[9] In all the circumstances of this case, I consider that \$3,000 costs, plus expenses incurred in ensuring Mr King's attendance (being travel costs of \$544.89 and accommodation costs of \$103.11) are appropriate.

[10] I therefore order the applicant, Denise Marilyn Edmonds, to pay to the respondent, Allied Petroleum (NI) Limited, \$3,000 in costs, plus \$648 in expenses.

G J Wood
Member of the Employment Relations Authority

