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French v The Warehouse Limited 253A/10 (Auckland) [2010] NZERA 601 (30 July 2010)

Last Updated: 3 November 2010

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 253A/10 5054501

BETWEEN SALLY-KAE NOELENE

FRENCH Applicant

AND THE WAREHOUSE LIMITED

Respondent

Member of Authority: Yvonne Oldfield

Representatives: Mark Ryan for Applicant

Karen Jones for Respondent

Submissions received: 28 June 2010 from Applicant

23 June, 30 June 2010 from Respondent

Determination: 30 July 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] Ms French's employment relationship problem related to claims of unjustified disadvantage and unjustified dismissal. As recorded in a determination dated 25 May 2010, the Respondent successfully defended all those claims. Counsel for the Respondent has informed the Authority that the cost of that defence was "in excess of \$15,000.00" plus executive time. The Respondent now seeks \$4,500.00 by way of contribution to costs, and disbursements of \$125.00.

[2] In support of the Respondent's application Ms Jones asserted that the costs incurred were reasonable. She noted that the matter was first filed in the Authority in 2006 and a timetable set in early 2007. That was subsequently vacated at the Applicant's request when the Applicant was unable to confirm whether legal aid had been granted. It was not until March 2009 that the Applicant advised that she wished the Authority to proceed to investigate her claim. The Respondent says that this delay increased costs as did the fact that there was an amended statement of problem which necessitated an amended statement in reply. Ms Jones also noted that the broad scope of the Applicant's claims made it necessary for the Respondent to table very comprehensive evidence. However she said the fact that such thorough evidence was tabled helped to minimise the length of the investigation meeting, which was kept to one day.

[3] The Respondent's application for costs (with submissions) was received by the Authority (and by Mr Ryan) on 23 June. Pursuant to paragraph [57] of the determination in this matter, any application for costs was to be made no later than 28 days from the date of the determination. On 28 June, on the applicant's behalf, Mr Ryan lodged a notice of opposition to the application on the grounds that the application for costs was outside the 28 day timeframe directed by the Authority.

[4] Mr Ryan made no other submissions on the issue of costs.

[5] On 30 June Ms Jones filed a short memorandum which she requested to have treated as an application for leave to file out of time "to the extent that it is necessary." She went on to assert that the Applicant had not identified any prejudice arising out

of the delay, which was only one day. She also noted that the Applicant would not be impeded in the pursuit of her challenge to the Authority's determination by the making of a costs determination.

Determination

[6] The Respondent's costs' application was indeed only one day late. It is also correct that the Applicant has not pointed to any prejudice arising out of that delay. Finally I note that the 28 day period provided for in the determination included a statutory holiday which reduced by one the number of working days available for the parties to address the matter of costs.

[7] In all the circumstances the application for leave to file out of time is granted.

[8] I accept the Respondent's assertions that costs were increased by the delay in progressing the matter (which was caused by the applicant) and by the need to respond to wide ranging allegations. I also accept that the Respondent's thorough and competent preparation was a factor in the Authority being able to keep the meeting to a day.

[9] In all the circumstances I am satisfied that the Applicant should make a contribution to costs that is at the upper end of what would normally be awarded in respect of an investigation that required a one day meeting.

[10] I therefore order that the Applicant, Ms French, pay to the Respondent, The Warehouse Limited, the sum of \$4,000.00 as contribution to its costs, plus disbursements of \$125.00.

Yvonne Oldfield

Member of the Employment Relations Authority

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