

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 88/10  
5160299

BETWEEN                      DAMIEN GARTNER  
   Applicant  
  
AND                              SPOTLESS SERVICES (NZ)  
   LIMITED  
   Respondent

Member of Authority:      G J Wood  
  
Representatives:            John Langford for the Applicant  
   Paul McBride for the Respondent  
  
Submissions Received:    By 26 April 2010  
  
Determination:             6 May 2010

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     In my substantive determination I found that Mr Gartner had been justifiably dismissed by the respondent (Spotless). Spotless claims that it ought to be awarded \$5,000 as a reasonable contribution to its total costs of \$7,111 plus GST, together with disbursements of \$336.31. It considers that its costs and disbursements were reasonably incurred and that while the matter only took four hours to investigate, there had previously been a challenge to specialist safety and other technical findings that Spotless had made on the way to its finding that dismissal of Mr Gartner was necessary. However, it noted that Mr Gartner agreed with most of the respondent's evidence in this regard at the investigation meeting.

[2]     Spotless also noted that Mr Gartner is in employment again as an electrician, and should therefore be able to pay such a sum. Assessing costs on a tariff basis, it claimed that \$3,000 per day was merely a starting point.

[3] On behalf of Mr Gartner, it was submitted that the investigation meeting took only half a day, that Mr Gartner is not a strong financial position and thus would not be able to make any lump sum payment and that the claim was made at the time when Mr Gartner was out of work and the matter was still before the Registration Board.

[4] The fact is that Mr Gartner had pleaded guilty to the charges before the Registration Board (and had been convicted) before the Authority's investigation meeting. That called into question whether this claim should ever have been brought. Effectively, Mr Gartner's sole substantial claim was that the *punishment did not fit the crime*. That submission was rejected in my substantive determination.

[5] I accept that because there were technical issues there was significant preparation required in this case. The fact that it was dealt with efficiently does not negate the need for that preparation, but in fact the reverse may apply.

[6] I accept that the disbursements were necessary, given that Mr Davison had to attend from Auckland and Mr Gartner should have been well aware of that.

[7] A costs award is not designed to punish Mr Gartner, but Spotless is entitled to a reasonable contribution to its costs. In all the circumstances of this case I conclude that an award of \$3,000 costs is appropriate, plus disbursements.

[8] I therefore order the applicant, Damien Gartner to pay to the respondent, Spotless Services (NZ) Limited, the sum of \$3,000 in costs and \$336.31 in disbursements.

[9] Mr Gartner provided no information on which it would be safe for me to conclude that he is unable to make such payments as ordered. However, the parties may negotiate over an instalment payment plan, and if Mr Gartner considers that he is unable to pay the amount ordered forthwith, he may apply to vary or alter the Authority's costs order (clause 15(2) to Schedule 2 of the Act).

**G J Wood**  
**Member of the Employment Relations Authority**