

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2013] NZERA Wellington 56
5373586

BETWEEN

TONIA HANSON
Applicant

AND

IAN PARKER T/A PARKER
MAZENGARB
Respondent

Member of Authority: P R Stapp

Submissions Received: By 8 April 2013

Date of Determination: 15 May 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] There is an unresolved issue in regard to costs not settled by the parties, where costs were reserved by the Authority in a determination [2013] NZERA Wellington 10. The respondent has submitted that its total costs in defending the matter were \$4,619.56 plus GST. The respondent is seeking an appropriate contribution for the applicant to make towards these costs. The sum claimed by the respondent is \$3,500.

[2] The applicant replied in a written statement dated 20 March 2013 and objected to the amount of costs being claimed by the respondent. She says that she only took the case to the Authority due to the respondent not agreeing to accept a recommendation in mediation. She felt she had no choice but to pursue the next course of action available. She feels that costs are too high as the respondent is a lawyer and who has engaged another lawyer to help with the case.

[3] The applicant says she feels disillusioned about the process. First, not being able to reach an agreement by way of a mediation process. Second, facing a stressful situation of having what she felt was a trial in front of the Authority. Third, to learn

the result of the Authority was in contrast to the view of the mediator. She says she is a single mother raising two teenage children and basically is living week to week.

[4] She says she does not earn a great deal of money in her new job and has no savings.

The Authority's determination

[5] Costs are assessed on a notional daily tariff of \$3,500 per day. Both parties were aware of this during the Authority's investigation meeting. I wish to make the following points on the issues raised by Ms Hanson:

- i. That I could not possibly comment on a recommendation associated with the mediation. Mediation is confidential and irrelevant to the current claim for costs.
- ii. That it is entirely possible to get different outcomes through the process of mediation and a Authority investigation because the processes are different and the information relied upon could be very different too.
- iii. That there is no requirement compelling any party to accept a recommendation from anyone.
- iv. That the respondent has objected to Ms Hanson raising the matter of mediation and requested that it not be considered as it is irrelevant to the issue of costs. I agree with that and add that mediation is confidential and as the respondent has not waived the matters discussed in the mediation.
- v. That as a matter of public policy the parties have to meet their own costs for mediation. There are no circumstances in this case that the Authority should intervene and make any assessment of the costs for that part of the process. In other words there is nothing that causes me to depart from the established principle of not awarding costs for mediation. Both parties went to mediation and the purpose of mediation is to endeavour to save the costs of any investigation.

- vi. That the respondent, despite being a lawyer, has every right to get representation. I note he has engaged a person with employment law experience as he has no involvement in employment law in his own practice.

[6] It seems this case highlights that the applicant apparently did not prepare herself in the event that she was unsuccessful in the Authority. Any party should factor this into the risk analysis should the worst possible outcome happen, as has happened here for the applicant.

[7] Parties need to be mindful that the Authority's investigation is an entirely separate and different procedure to mediation. The Authority's investigation involves a hearing (called an investigation meeting), evidence being tested; and the meeting may appear like a trial, including cross-examination. That is part of the process and people need to have their eyes wide open to the difference between an Authority's inquisitorial investigation and a mediation service.

[8] Ms Hanson has relied on her current personal circumstances to minimise any award of costs. I accept that she has two children, is the sole breadwinner and says she is living week to week. However, Ms Hanson did not take the opportunity to provide sufficient evidence to prove hardship and or any reasons associated with an inability to pay some time in the future. Therefore she does have to meet some of the burden of the costs.

[9] This was an important case to both parties. There were issues between the parties that required determination, and I accept the parties' genuineness in wanting the matters tested for their own reasons involving the principle of the matter.

[10] Therefore, I am prepared to reduce the notional daily tariff to meet Ms Hanson's circumstances that she has relied on. The respondent was successful and has been put to some cost, but also by its own decision wanted a determination on the matters.

[11] I therefore award the respondent half the daily tariff as a contribution towards its costs. In this regard Ms Hanson is required to pay Ian Parker \$1,750 costs. I would suggest that the parties come to some arrangement for instalments on this given

that Ms Hanson is currently in paid employment and says she is having difficulties with living day to day on her income.

[12] I order Tonia Hanson to pay Ian Parker \$1,750 costs.

P R Stapp
Member of the Employment Relations Authority