

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 229A/07
5047002

BETWEEN MARILYN HEREMAIA
 Applicant

AND SHEDDAN INVESTMENTS LTD
 T/A TOKAANU HOTEL
 Respondent

Member of Authority: Vicki Campbell

Representatives: Tim Oldfield for Applicant
 Ken Thurston for Respondent

Submissions received: 21 August 2007 from Applicant
 No submissions from Respondent

Determination: 9 October 2007

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 2 August 2007 I found that Ms Heremaia had been unjustifiably dismissed from her position as second chef for the respondent.

[2] In my determination I reserved the question of costs and invited the parties to resolve the matter between them. They have been unable to do so and I am now in receipt of memorandum from the applicant. The Authority wrote to Mr Thurston on 21 August 2007 inviting him to make submissions on the issue of costs. He has not taken up that opportunity.

[3] I have considered the submissions and I am satisfied that the discretion under clause 15 of Schedule 2 of the Act ought to be exercised in favour of Ms Heremaia.

[4] The following principles are appropriate where the Authority is exercising its discretion in relation to costs (*PBO Ltd (formerly Rush Security Ltd) v Da Cruz*, [2005] 1 ERNZ 808):

- There is a discretion as to whether costs should be awarded and what amount;
- The discretion is to be exercised in accordance with principle;

- The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority;
- Equity and good conscience is to be considered on a case by case basis;
- Costs are not to be used as a punishment or as an expression of disapproval of an unsuccessful party's conduct although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award;
- It is open to the Authority to consider whether all or any of the parties costs were unnecessary or unreasonable;
- That costs generally follow the event;
- That without prejudice offers can be taken into account;
- That awards will be modest;
- That frequently costs are judged against a notional daily rate;
- The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[5] The applicant was represented by her union at the investigation meeting. The union have disclosed that representation to Ms Heremaia in this case was free. In the judgment of Perkins J, *IHC New Zealand Inc v Scott AK*, AC45A/06, unreported, 18 October 2006, the court stated:

I speculate that it may often be the case that an individual employee will be financially backed by their union or an employer having its costs underwritten by an insurer in cases such as this. Such issues I regard as irrelevant to the decision I have to make.

[6] There is nothing in this case to derogate from the principle that costs follow the event. The total costs sought by the applicant are \$750.00 together with expenses and disbursements amounting to \$508.40. I do not regard the quantum of the costs claimed as being excessive or unreasonable given the preparation required and the length of the hearing.

[7] The costs award in favour of the applicant against the respondent will be \$750.00 together with expenses and disbursements amounting to \$508.40.

[8] An order is made accordingly.

Vicki Campbell
Member of the Employment Relations Authority