

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 77/09
5096730

BETWEEN MARNIE HUNTER
 Applicant

AND STORE-IT LIMITED
 Respondent

Member of Authority: G J Wood

Investigation By Way Of
Submissions Received: By 18 May 2009

Determination: 3 June 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] In my substantive determination I dismissed Ms Hunter's claim that she was treated unfairly in the course of her employment by Store-It, leading to her becoming too ill to work and her claim that she was subsequently unjustifiably dismissed when she could not attend work.

[2] On behalf of Store-It Mr Kynaston has sought costs. He submitted in relation to the eight month delay that this was due to a challenge, since withdrawn, and attempts to get Ms Hunter to agree to costs. I accept that in the circumstances the delay is explicable. Ms Hunter's former representative, Ms Buckett, filed a memorandum with the Authority seeking to be heard on the matter of costs, even though she no longer had instructions for her. I agreed to hear this material provided Ms Hunter agreed. Support staff contacted Ms Hunter and she was given several opportunities to respond to that request, or arrange for submissions to be made on her own behalf. She has done neither. Therefore I must determine the issue of costs without the benefit of any submissions on her behalf, as any more delay is unlikely to change things and would be unfair on Store-It.

[3] Store-It seeks a contribution to costs in the sum of \$7,500 (constituting less than 40% of Store-It's actual costs) based on a two and half day investigation meeting. It also relied on additional time required due to Ms Hunter questioning the genuineness of Store-It's emails and its advertising processes.

[4] The matter did take an unusual length of time to be investigated, which was not apparent from the nature of the claim. Not all of the delays can be laid at Ms Hunter's feet, however, because Store-It's chief witness, Mr Price, was a difficult witness and the need for him to recast some of his evidence in order to bolster it led to an extended investigation.

[5] One can only assume that Ms Hunter is able to make a reasonable contribution to Store-It's costs, because she went into the investigation in the Authority with her eyes upon; see for example *Shanks v. Agar (t/a Rod Agar & Co)* [1996] 2 ERNZ 578. As there is no evidence of an inability to pay an award of costs, which may be made over time, I accept that a reasonable contribution for Ms Hunter to pay to Store-It is \$5,000.

[6] I therefore order the applicant, Ms Marnie Hunter, to pay to the respondent, Store-It Limited, the sum of \$5,000 in costs.

G J Wood
Member of the Employment Relations Authority