

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN John Ioane (Applicant)
AND Fisher & Paykel Appliances Limited (Respondent)
REPRESENTATIVES Victoria Letele, Counsel for Applicant
Shan Wilson, Counsel for Respondent
MEMBER OF AUTHORITY Leon Robinson
INVESTIGATION MEETING 16 May 2005
31 May 2005
DATE OF DETERMINATION 13 June 2005

DETERMINATION OF THE AUTHORITY

Application for Costs

[1] By a Determination dated 30 March 2005¹, I determined that the Authority was unable to assist the applicant Mr John Ioane (“Mr Ioane”) in the resolution of his employment relationship problem. The parties were invited to resolve costs between them but they were unable to agree. The representatives have lodged memoranda to assist me in the exercise of the Authority’s discretion.

Costs in the Authority

[2] It was said in *Harwood -v- Next Homes Limited*² and *Graham and Airways Corporation of New Zealand Ltd*³ that average awards of costs fall between \$1,000.00 and \$1,500.00 for a one-day investigation meeting by the Authority. There was agreement too in those decisions of a trend towards a higher figure of between \$2,000.00 and \$3,000.00. It has also been held that generally, awards of costs in the Authority are modest consistent with the Authority’s approach to Investigations. That approach is as described in *Wilson and Grey Power Publishing Co Ltd*⁴.

[3] The principles and rules conventionally applied to applications for costs in traditional adversarial or trial litigation do not fit with the Investigative role of the Authority and the objects of the legislation which establishes it⁵. Those principles and rules continue to remain relevant however

¹ AA107/05

² unreported, AC70/03, 19 December 2003, Travis J

³ unreported, AA39/04, 28 January 2004, Alastair Dumbleton

⁴ unreported, AA58/03, 4 March 2003, Alastair Dumbleton. See also the Authority’s Determinations in *Beardsley and Campac International Limited* AA39A/01, Yvonne Oldfield and *Henry and Youth Horizons Trust* AA107A/02, Ken Anderson.

⁵ *Harwood and Koia -v- Attorney-General*, unreported, AC8/04, 23 February 2004, Colgan J.

and the overall question is to determine what is a fair and reasonable contribution as between the parties. The Authority adopts a principled approach taking into account relevant matters and taking no account of irrelevant ones.

The submissions

[4] Ms Wilson advises Fisher & Paykel Appliances Limited's ("Fisher & Paykel") actual costs are \$26,715.09 together with disbursements of \$1,335.09. It does not seek full reimbursement of those costs but rather a contribution to them.

[5] Ms Letele informs the Authority of Mr Ioane's particular financial circumstances. That assistance is very helpful to the Authority in taking into account Mr Ioane's ability to meet an award of costs against him. Ms Letele makes a submission that costs ought to be left to lie where they fall, or in the alternative, she advises that Mr Ioane makes an offer to pay costs in the sum of \$2,000.00.

Determination

[6] Mr Ioane initially sought an order for interim reinstatement. The parties very sensibly reached an accommodation between them such that they were not required to incur costs in respect of an interim application. Fisher & Paykel is to be commended for its magnanimous accommodation.

[7] Fisher & Paykel successfully defended Mr Ioane's claims against it. It is to be regarded as the successful party. It is appropriate then that costs follow that event and Fisher & Paykel shall have an award of costs, on a contribution basis, in its favour.

[8] It is necessary to now determine what a reasonable contribution would be to Fisher & Paykel's reasonable costs. The Authority's investigation meeting proceeded over two full days and a number of witnesses attended to assist the Authority.

[9] I consider what reasonable costs would be on a notional basis. Applying a multiplier of 2 to total meeting time of 16 hours at a reasonable hourly rate for professional counsel of \$250.00, I arrive at notional reasonable costs of \$4,000.00.

[10] Taking into account Mr Ioane's ability to pay as advised by his counsel, I consider a reasonable contribution to Fisher & Paykel's costs which I have notionally fixed as reasonable at \$4,000.00, would be \$2,000.00. I regard that contribution as neither illusory for Fisher & Paykel nor punitive for Mr Ioane. Exercising my discretion on a principled basis, **I order John Ioane to pay to Fisher & Paykel Appliances Limited the sum of \$2,000.00 as a contribution to costs.**

Leon Robinson

Member of Employment Relations Authority