

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Jan-Hai Iosefa (Applicant)
AND Canterbury Hospitality Group (Respondent)
REPRESENTATIVES Bridget Ayrey, Counsel for Applicant
Brian Nathan, Counsel for Respondent
MEMBER OF AUTHORITY James Crichton
SUBMISSIONS RECEIVED 17 August 2006
23 August 2006
DATE OF DETERMINATION 13 September 2006

COSTS DETERMINATION OF THE AUTHORITY

The application for costs

[1] By determination dated 29 June 2006 the Authority resolved the employment relationship problem between these parties by determining to dismiss Ms Iosefa's application in its entirety.

[2] Costs were reserved.

The claim for costs

[3] Canterbury Hospitality Group Limited (Canterbury Hospitality) through their counsel, as the successful party, seeks a contribution to their costs of \$2,500. On the basis of the respondent counsel's submission, that would represent about one third of the costs actually incurred in defending Ms Iosefa's claim.

[4] Canterbury Hospitality describe Ms Iosefa's claim as *both vexatious and trifling*. The submission of the respondent goes on to say that even had the Authority found that there was an unjustified dismissal, the degree of contribution from Ms Iosefa would have been such as to make the likely award to her so insignificant as not to justify the cost of the proceedings.

[5] For her part, Ms Iosefa, through her counsel, resists those claims essentially on the basis that the only way that Ms Iosefa could explore whether she had been treated fairly or not was by bringing her case to the Employment Relations Authority.

[6] In all the circumstances, Ms Iosefa, through her counsel, suggests that this case is one where it is appropriate for costs to lie where they fall.

The legal principles

[7] The recent decision of the Full Bench of the Employment Court in *PBO Ltd v Da Cruz* AC 2A/05, 9 December 2005, helpfully sets out the relevant principles and makes clear that those principles are *appropriate ...and consistent with [the Authority's] functions and powers*. The decision also confirms that *there is nothing wrong in principle with the Authority's tariff based approach so long as it is not applied in a rigid manner without regard to the particular characteristics of the case*.

Discussion

[8] This is a case where the respondent, Canterbury Hospitality, the successful party, seeks a modest award of costs (one third of its reasonable actual costs) and Ms Iosefa submits that costs should lie where they fall because her only means of having the fairness of her dismissal impartially assessed was by bringing her proceedings in the Authority.

[9] Certainly it is true that Ms Iosefa has an absolute right to bring her claim before the Authority and have it assessed but she, like other parties, needs to be clear that that process may not be free of cost. It is a longstanding principle of law that successful parties should expect to have a contribution to their costs from the unsuccessful party in order that they do not bear the full cost of a successful defence of their position.

[10] Ms Iosefa is I imagine still a wage earner and will have undoubtedly incurred legal costs in mounting her claim before the Authority. Her ability to sustain a normal cost award may be limited by reason of her means although I do not have submissions on that point.

[11] In all the circumstances, I am inclined to make the assumption that Ms Iosefa's means are more limited by reason of youth and her chosen industry than perhaps the normal applicant in proceedings of this kind and accordingly I propose to take those factors into account in making an award of costs against her.

Determination

[12] I think in all the circumstances, a contribution to Canterbury Hospitality's costs of \$1,000.00 would be appropriate and I direct that Ms Iosefa make arrangements to pay that sum to Canterbury Hospitality Group Limited. Canterbury Hospitality Group Limited may need to reach an arrangement with Ms Iosefa for that amount to be paid off over time.

James Crichton
Member of Employment Relations Authority