

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Jafa Café Services Limited (Applicant)
AND Ivy Rossiter (Respondent)
REPRESENTATIVES John Rakich, Advocate for Applicant
Rachel Oldham, Counsel for Respondent
MEMBER OF AUTHORITY Leon Robinson
DATE OF DETERMINATION 18 March 2005

SUPPLEMENTARY DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] By a Determination dated 15 February 2005¹, I considered it appropriate to revisit a Determination as to Costs I issued on 1 November 2004². I have subsequently considered further submissions from Ivy Rossiter's ("Ms Rossiter") Counsel. Jafa Café Services Limited ("Jafa Café") has elected not to make further submissions. I reconsider the earlier Determination as to Costs now that Jafa Café has verified its costs of \$2,185.00 (exclusive of GST).

[2] Mr Rakich for Jafa Café had earlier submitted that costs ought to lie where they fall. He noted that both parties were unsuccessful as against the other and lamented that while the Authority found Ms Rossiter did not give the requisite notice, it nonetheless declined to exercise its discretion to impose a penalty against Ms Rossiter.

[3] Ms Rossiter successfully defended Jafa Café's claims against her. Those claims totalled \$1,290.50. They were unmeritorious claims and while I determined that Ms Rossiter did not give the requisite notice and was thereby in breach of an implied term, I said:-

The Authority further notes that none of the claims by Jafa Café for the total sum of \$1,290.50 arise out of the breach of the implied term to give reasonable notice. The alleged losses do not flow from that breach and therefore they cannot be sustained.

[4] Jafa Café successfully defended Ms Rossiter's claim for personal grievances. I concluded that her claims were primarily brought to meet Jafa Café's claims against her – claims that I diagnosed as unmeritorious.

[5] It remains the case that Ms Rossiter incurred costs in defending unmeritorious claims against her. While I am now satisfied that Jafa Café incurred costs in respect of the Investigation Meeting, I am not persuaded at all that my earlier Determination as to Costs and the reasons expressed

¹ AA55/05

² AA308B/04

therein ought to be revised. She is entitled to now have confirmed the Authority's initial exercise of its discretion in her favour.

[6] Jafa Café Services Limited is ordered to pay to Ivy Rossiter the sum of \$1,500.00 as a contribution to costs together with \$70.00 in respect of her lodgement fee.

Leon Robinson
Member of Employment Relations Authority