

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Adair Nithsdale Jeffries (Applicant)
AND Adis International Limited (Respondent)
REPRESENTATIVES Gennise Luen, for Applicant
Naomi Cervin, for Respondent
MEMBER OF AUTHORITY Janet Scott
SUBMISSIONS RECEIVED 20 September, 30 September & 7 October 2005
DATE OF DETERMINATION 20 October 2005

COSTS DETERMINATION OF THE AUTHORITY

The applicant brought a personal grievance claim alleging constructive dismissal. The applicant was unsuccessful in that claim.

The respondent now seeks an award of costs in the matter.

Submissions

The respondent submits it has incurred significant costs in defending this matter and seeks an award of costs in the sum of \$20,000. (It submits actual costs are \$54,883.75). In its submissions the respondent focussed on arguments highlighting what it saw as the historical and unmeritorious nature of the applicant's claims and the misleading nature of her evidence.

The applicant seeks a stay on the decision as to costs or at least a stay on the execution of any order for costs. It is also submitted that actual costs incurred by the respondent in this matter are wholly out of proportion with costs that could reasonably be expected for preparation and attendance at a one day hearing before Authority. The Authority was asked to have regard to the general level of costs awarded in the Authority and in particular recent costs decisions that award sums in the amount of \$1500 to \$2000 for a one day hearing. It was submitted that anything more would be punitive given the applicant's personal circumstances and her decision to represent herself.

Discussion

The power to award costs is contained in the Second Schedule of the Employment Relations Act 2000. The general principles to be applied in cost applications are set out, in case law including NZALPA v Registrar of Unions (1989) NZILR,550, Okeby v Computer Associates (NZ) Limited

[1994] 1 ERNZ 613 and *Reid v New Zealand Fire Service Commission* [1995] 2 ERNZ 38. The criteria to be taken into account include the importance of the case to the parties, the way the case was conducted, the conduct of the parties at the hearing, the amount of time required for effective preparation over and above that which would ordinarily be inferred, whether arguments lacking in substance were advanced or whether unduly legalistic and technical points were taken and the actual costs incurred.

The respondent has incurred very substantial costs in this matter – much higher than those usually incurred in defending claims of this nature. I acknowledge, however, that the applicant, whilst she was entitled to file when she did, did delay until the 11th hour in pursuing her rights in this matter. This, together with the multitude of breaches claimed by the applicant, has undoubtedly contributed to the very high costs incurred by the respondent in defending the matter.

The respondent is entitled to recover a reasonable contribution towards its costs and those costs should now be set to allow the Court to address the matter in its entirety in the context of the challenge filed by the applicant.

In setting costs I have had regard to the submissions of the parties and to all matters relevant to the conduct of the hearing taking into account that the applicant was allowed significant leeway to present her claim as she saw it. I have also considered the general level of costs awarded for a one day hearing in the Authority and the fact that the number of claims made by the applicant and their historical nature necessitated a greater than average amount of preparation by the respondent.

Determination

In all the circumstances of this case I direct the applicant to pay to the respondent the sum of \$3,000 as a reasonable contribution to the costs it incurred in defending this matter.

I decline to order a stay in the execution of this costs award. Litigation takes place in the real world and is costly. Considering the costs actually incurred by the respondent in this matter the applicant is being directed to make a modest contribution towards those costs. In the circumstances the sum awarded is reasonable.

Janet Scott
Member of Employment Relations Authority