

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 82/08
5107272

BETWEEN ERIN JILLINGS
Applicant

AND HIGH TREES PARK LIMITED
Respondent

Member of Authority: G J Wood

Representatives: Graeme Ogilvie for Applicant
Michael Fennessy for Respondent

Investigation Meeting: On the papers

Submissions received: 6 June 2008

Determination: 12 June 2008

DETERMINATION OF THE AUTHORITY

[1] Mr Jillings filed a statement of problem claiming unjustified actions and dismissal, and a failure to provide an employment agreement by the respondent (High Trees) on 22 November 2007.

[2] High Trees claimed Mr Jillings was only ever a casual employee for a month and that his claims were time-barred as well as being false. High Trees also claimed that, other than for the above short period, Mr Jillings worked under a contract for services and therefore was not an employee and subject to the Employment Relations Authority's jurisdiction.

[3] Mr Jillings wanted to go to mediation, but High Trees resisted through its principal, Ms Andrea Craven. At a conference call on 13 February 2008 I directed the parties to mediation where they were to attempt, in good faith, to reach an agreed settlement of their differences. I noted that the direction did not affect High Trees' rights to challenge the timeliness of the application and/or the Authority's jurisdiction.

[4] Mediation was unfortunately unsuccessful and Mr Jillings wished to pursue the matter. At another conference call on 28 April the matter was set down for an investigation meeting on 12 August. On that same day, Mr Ogilvie wrote to the Authority withdrawing Mr Jillings' claim.

[5] On behalf of High Trees, Mr Fennessy has subsequently claimed a contribution towards High Trees' legal costs of \$1,063.75. This claim included all previous attendances, plus attendance at mediation, the second conference call and the cost of preparation of the costs application itself.

[6] I do not accept that any costs award is appropriate in these circumstances. As a matter of public policy, costs are not normally awarded for mediation and there is no reason to conclude otherwise than that the usual rule should apply in this matter.

[7] High Trees was put to the expense of a further conference call to set the matter down but that is to be expected where applicants have the right to pursue their claims to an investigation meeting of the Authority. On behalf of Mr Jillings, Mr Ogilvy then promptly withdrew the claim following the conference call, which meant that all parties were relieved of the significant costs (and not just in representation) that would have been involved in preparing for and attending an investigation meeting. There was no evidence that Mr Jillings' application was frivolous or vexatious, despite High Trees' consistent opposition to its merits. By contrast, with respect to the claim that no employment agreement was furnished by High Trees, it accepted that it employed Mr Jillings (albeit for a short period), yet did not supply a copy of the employment agreement with its statement in reply.

[8] In all the circumstances of this case it would therefore be entirely inappropriate to require Mr Jillings to contribute towards High Trees' costs. I therefore determine to dismiss High Trees Park Limited's claim for costs.

G J Wood
Member of the Employment Relations Authority