



costs should lie where they fall for the second investigation meeting. In reply the applicant refers to her difficult financial situation, her own legal costs as against the modest compensation awarded and the respondent's large financial resources to support the submission that costs should lie where they fall for the first investigation.

[3] It is appropriate first to assess each investigation meeting separately.

[4] I am told by the respondent that its legal fees for dealing with the interim reinstatement application were over \$9,000.00. These matters typically are dealt with urgently and inevitably there are substantial legal costs as a result if counsel is instructed. The generally brief investigation meeting in these situations does not reflect the true picture of the resources that have to be applied at short notice. In that circumstance, a claim for costs of \$2,000.00 appears reasonable. Balanced against that there is the issue about Ms Jinkinson's difficult financial situation. The task is to assess an amount that is more than just derisory as a contribution to the reasonable costs of the successful party but is not oppressive in the circumstances of the unsuccessful party. I set that figure at \$1,500.00.

[5] I do not agree that costs in respect of the substantive investigation meeting should lie where they fall. Ms Jinkinson's grievance means that she suffered a wrong when her employer dismissed her. Given the finding that there existed a genuine redundancy situation reimbursement and reinstatement could not be awarded but the grievance could still be seen either as an unjustified dismissal or an unjustified disadvantage. The just approach is to assess costs on the basis that Ms Jinkinson established a grievance but some allowance must be made for her limited success. In the ordinary course I would allow costs of around the sum claimed (\$4,000.00) for a meeting that lasted more than one day but less than two. However, the established grievance could have been dealt with in less than a day so an order of \$2,500.00 plus lodgement fees but not hearing fees might follow. There is nothing else about the circumstances of this matter to cause any adjustment to that figure.

[6] The net result would be an order for costs in favour of Ms Jinkinson of \$1070.00. Considering the matter as a whole that seems a just outcome.

[7] I do not accept that the modest award of compensation, Ms Jinkinson's own unpaid legal costs, her difficult financial situation and the respondent's resources taken together should result in an order of costs greater than would otherwise be

appropriate. Parties who bring or defend matters in the Authority must be taken as knowing from the outset that costs are usually set on a daily tariff approach. There is readily available information from the Department of Labour website about levels of compensation and costs. Parties must regard these factors as constants when assessing what to do about employment relationship problems.

[8] The applicant also makes a point about the respondent's refusal to participate in mediation until the proceedings were lodged with the Authority causing her increased costs. Any increase should be minimal. The lodgement fee is \$70.00, completing a statement of problem is not onerous and this matter required only a brief phone conference before the direction to mediation. I am also mindful that the Authority offered to deal with the substantive matter as a priority instead of investigating and determining the interim reinstatement application. Ms Jinkinson elected to proceed and it was not possible to get to mediation before the interim reinstatement claim was dealt with. None of that is a reason to increase costs in her favour in light of the outcome.

[9] In summary, the respondent is to pay the applicant costs and expenses totalling \$1,070.00.

Philip Cheyne  
Member of the Employment Relations Authority