

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Tania Johnson (Applicant)
AND Badminton New Zealand Limited (Respondent)
REPRESENTATIVES Susie Tait, Counsel for Applicant
Rex Chapman, Counsel for Respondent
MEMBER OF AUTHORITY Helen Doyle
SUBMISSIONS RECEIVED 9 June 2006
30 June 2006
DATE OF DETERMINATION 21 July 2006

DETERMINATION OF THE AUTHORITY

[1] In my determination dated 10 March 2006 I did not find that the applicant had a personal grievance and I reserved the issue of costs.

[2] The respondent's representative has lodged a submission with the Authority seeking costs. The applicant's representative has lodged a submission in response.

[3] The respondent incurred total actual costs of \$11,273.75. Mr Chapman seeks on its behalf a contribution toward those costs and disbursements in the sum of \$7,515.83. Mr Chapman said in his submission that the respondent wanted the Authority to note that it is a non profit sporting association. The sum claimed includes disbursement incurred for air travel for witnesses from the respondent organisation and Mr Chapman.

[4] Ms Grins in her submission on behalf of the applicant says that an award of the nature sought by the respondent would be punitive to the applicant. She submits that an award of costs should be at the lower end of the scale and in line with the usual amounts for a one day Authority meeting. Ms Grins in her submissions says that the applicant is now overseas and she is unaware of her whereabouts.

[5] The Authority exercises its discretion with respect to an award of costs by taking a principled approach. The types of principles that are consistent with the Authority's functions and powers are set out and approved in the judgment of the full Court in *PBO Limited (formerly Rush Security Limited v Da Cruz* (unreported) 9 December 2005 AC 2A/05. The judgment recognised that principles applying to costs decisions by the Employment Court established in the Court of Appeal cases, including *Binnie v Pacific Health Ltd* [2002] 1 ERNZ 438, were not applicable to the Authority. This included the starting point that Mr Chapman has referred to in his submission of sixty-six percent.

[6] This was an important case for both parties. It was not unduly complicated. It was investigated within one day. Although the applicant was unsuccessful costs are not to be used as a punishment. Conduct which increases the costs unnecessarily can be taken into account. Both parties in this case presented their cases well and there can be no deduction in that regard.

[7] Both parties attempted to resolve the matter. The respondent is a non profit sporting organisation. I do consider that along with the other matters in the exercise of my discretion.

[8] I have no submission about the applicant's ability to pay in the circumstances where there is no knowledge of her whereabouts.

[9] There was nothing in the presentation, complexity or investigation process in terms of this case that would cause a departure from the usual approach to costs in the Authority. Awards in the Authority for costs will generally be modest and are frequently judged against a notional daily rate. The majority of cost awards in the Authority fall within the range of \$2000 to \$2499.00 as recognised in *PBO*.

[10] There should be an award of costs to the respondent. I am of the view in all the circumstances that a fair and reasonable award is the sum of \$2300.00.

[11] In terms of disbursements I have considered the matter of the airfares. I am of the view that the respondent is entitled to disbursements in the following amounts:

- a. Half of Mr Chapman's airfare of \$293.00 recognising that it was an option for the respondent to instruct someone in Christchurch but that Badminton NZ has its head office outside of Christchurch.
- b. The full cost of travel for Mr Dunne of \$208.02 which figure includes GST.
- c. I am not prepared to allow the costs of air travel for Mr Skelt who was not required to appear.
- d. Photocopying and obtaining judgments in the sum of \$74.06.
- e. Tolls in the sum of \$9.15.

[12] The total amount that the respondent is entitled for disbursements is \$584.23.

[13] I order Tania Johnson to pay to Badminton New Zealand Limited the sum of \$2,884.23 as a contribution toward its costs and disbursements.

Helen Doyle
Member of Employment Relations Authority