

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 59A/08  
5101764

BETWEEN JULIE JOHNSON  
Applicant  
AND THE TRAVEL PRACTICE  
LIMITED  
Respondent

Member of Authority: James Crichton  
Representatives: Amanda Abbott, Counsel for Applicant  
Dennis Price, Advocate for Respondent  
Submission Received: 17 September 2008 from applicant  
No submissions from respondent  
Costs Determination: 10 October 2008

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**COSTS DETERMINATION OF THE AUTHORITY**

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**The application for costs**

[1] By determination dated 7 May 2008 the Authority resolved the employment relationship problem between these parties by determining that Ms Johnson had a personal grievance by reason of a constructive dismissal.

[2] Costs were reserved.

**The claim for costs**

[3] Ms Johnson, through counsel, as the successful party, seeks a contribution to her costs in the sum of \$4,000. The Authority is not told what Ms Johnson's actual legal costs are but counsel does indicate in her submissions that the figure claimed would be less than the total fee rendered.

[4] Of particular importance in this case is that the submissions filed by Ms Johnson identify a number of matters which are out of the ordinary and which, taken cumulatively, disclose a pattern of behaviour by the unsuccessful respondent which materially contributed to the costs that Ms Johnson was put to in prosecuting her claim. It is of course a well established principle that the Authority can give consideration to unreasonable or unhelpful behaviour from the unsuccessful party which materially contributes to the costs of the successful party, when determining costs awards.

[5] It is appropriate, given the particular circumstances of this case, that the Authority carefully consider the claim made on Ms Johnson's behalf that The Travel Practice Limited, by its unreasonable behaviour, materially contributed to Ms Johnson's costs.

[6] First, it is alleged that The Travel Practice Limited failed to respond to correspondence raising the personal grievance and that this avoidance behaviour was further perpetuated by The Travel Practice Limited's failure to file a timely statement in reply which was some two months late. Ms Johnson alleges that because of this behaviour by The Travel Practice Limited, she was put to additional cost having her lawyer chase the respondent up. Further, in order to have her grievance addressed in any way, she was forced to have her lawyer file a statement of problem in the Authority rather than try to deal with the matter on a more *low level* basis by addressing it in mediation. I accept both of those allegations as well made and as materially contributing to an increase in Ms Johnson's costs.

[7] Next, Ms Johnson notes that The Travel Practice Limited failed to attend at the mediation which the Authority's support officer had referred the parties to. I accept Ms Johnson's claim that this caused her further legal cost which, in the result would have been unnecessary expenditure because of the absence of the respondent employer.

[8] When the file came to me, I formed the view that directing the parties back to mediation would simply incur further cost and I declined to make such an order given the behaviour of the respondent previously.

[9] The matter was set down for an investigation meeting and the Authority's file and the notice forwarded to both parties make clear that a 9.30am start was required.

The respondent employer did not appear until 10.20am having been telephoned by my support officer to find out where the respondent was. Again, I accept Ms Johnson's claim that this delay further added to her legal costs.

[10] Finally, Ms Johnson alleges that she has been put to further cost by the failure of The Travel Practice Limited to meet its obligations in terms of settling payment of the award made against it by my determination and that this itself has created further cost. Again, I accept that it is reasonable for the usual cost award to be augmented by a sum representing this additional impost on the successful applicant.

### **The legal principles**

[11] The recent decision of the full bench of the Employment Court in *PBO Ltd v. Da Cruz* ACA 2A/05 sets out the relevant principles.

[12] In particular, Judge Shaw in giving the decision of the Court makes it clear that the principles usually identified by the Authority in making cost awards are *consistent with (the Authority's) functions and powers*.

[13] In addition, Her Honour observes that there is *nothing wrong in principle with the Authority's tariff based approach* so long as it is not applied rigidly and without regard to the particular facts of the case.

### **Determination**

[14] This was a matter which was dealt with in an investigation meeting which lasted barely two hours. On the usual tariff based approach, for a one day fixture a costs award would generally be in the order now of around \$3,000. In the instant case, this was a materially shorter investigation meeting than that, but I am satisfied that Ms Johnson was put to significant additional cost as a consequence of the various defaults of the respondent which I have detailed above. It is completely inappropriate for a party to effectively profit from their delay and unwillingness to deal with matters and entirely proper that such behaviour which causes loss to the other party be reflected in a costs award.

[15] In all the circumstances then, I think an appropriate costs award in the present case would be the sum of \$4,500 and I direct that that amount is to be paid by The Travel Practice Limited to Ms Johnson as a contribution to the latter's costs.

[16] In making that award, I take into account the various defaults by The Travel Practice Limited in addressing Ms Johnson's grievance which I hold put her to significant additional cost when a proper engagement of the parties at first instance may have resulted in the matter being resolved at a fraction of the cost for either party.

James Crichton  
Member of the Employment Relations Authority