



# New Zealand Employment Relations Authority Decisions

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## **Kiely v Air New Zealand Limited (Auckland) [2007] NZERA 117 (24 May 2007)**

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 113 A/07 File Number: 5042003

BETWEEN DALE KIELY

Applicant

AND AIR NEW ZEALAND LIMITED

Respondent

Member of Authority: Leon Robinson

Representatives: Stewart King for Applicant

David France for Respondent

Determination: 24 May 2007

### DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] By a Determination dated 29 April 2007, I determined that Mr Kiely was entitled to be reimbursed for the loss of his tie pin. Mr Kiely now claims his costs. The representatives have made submissions to assist me in the exercise of the Authority's discretion.

[2] Mr King for Mr Kiely details the total costs of his services charged to Mr Kiely's union in the order of 27 hours at \$180.00 per hour. There are also disbursements of the Authority's lodgement fee of \$70.00 and photocopying of \$6.00. I have no submission as to what an appropriate contribution might be.

[3] Mr King says that Air New Zealand Limited did not adopt a constructive approach to resolving the problem because it confused what was reasonable to pay with what was reasonable to carry and secondly, because of its neutral stance as to whether or not Mr Kiely had actually lost his tie pin.

[4] Mr France submits that the case has provided benefit for both Mr Kiely, his union and Air New Zealand in terms of the guidance the Determination provides in relation to reimbursement for losses of personal effects. Counsel also submits the Authority should have regard to Mr Kiely's non-compliance with the Authority's directions and also his apparent discourtesy in failing to conclude communications with Air New Zealand Limited in relation to costs.

[5] I agree with Mr France that there is some guidance now for the parties as to the circumstances of reimbursement. In that regard I note Mr Kiely's own erroneous view that claims less than \$1,500.00 were virtually automatic. If that was a common view, it has now been corrected and the investigation in that respect has been of assistance to both employees and Air New Zealand alike.

[6] I agree too that the Authority's timetabling directions were not closely followed. As well, I too was not pleased that witnesses advised to the Authority did not attend for interview. I accept that Air New Zealand Limited, as did the Authority, had prepared for those absent witnesses. As a courtesy to Air New Zealand Limited, any rejection of its counter-offer of costs ought to have been communicated. If it was not, this application may have been premature or possibly unnecessary altogether.

[7] This investigation meeting proceeded over one day. As Mr Kiely succeeded in obtaining a resolution in his favour, he shall be regarded as the successful party. Costs will follow that event and he will have a reasonable contribution to costs which I

regard as reasonable.

[8] This investigation did not involve complex legal principles or complicated factual matters. As such, the Authority's lower daily tariff is appropriate.

[9] Exercising my discretion on a principled basis, **I order Air New Zealand Limited to pay to Dale Kiely, for the credit of his union the Flight Attendant and Related Services Association, the sum of \$1,500.00 as a contribution to costs. This sum is inclusive of disbursements.**

Leon Robinson

**Member of Employment Relations Authority**

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