

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN David Kirkham (Applicant)
AND Metro Motors Holdings 2003 Ltd (Respondent)
REPRESENTATIVES Miranda Harvey, Counsel for Applicant
No appearance for the respondent
MEMBER OF AUTHORITY Marija Urlich
INVESTIGATION MEETING 1 December 2004
DATE OF DETERMINATION 17 February 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] In my determination of 17 December 2004, I found that the applicant was successful in his claim for unjustified dismissal and wage arrears. The applicant was awarded remedies. With regard to the issue of costs I wrote:

“Costs

[46] Ms Harvey has filed costs submissions a copy of which have been served on Metro Motors.

[47] Taking into account the Christmas/New Year period Metro Motors has 21 working days from the date of this determination in which to file and serve any costs memorandum in reply. If no reply is received then the Authority will move to determine the issue of costs.”

[2] The respondent has not filed a costs memorandum with the Authority.

[3] In her submissions as to costs Ms Harvey seeks full indemnity of the legal fees incurred by the applicant to date of hearing. She submits given the respondent’s attitude towards the applicant throughout this period and its failure to attend the investigation meeting this is an appropriate case for full indemnification of costs. The applicant’s legal fees total \$11,500.00. From the invoices provided these fees cover the period from 2 April 2004, when the applicant first sought legal assistance, through the mediation process until the investigation meeting on 1 December 2004.

[4] The applicant was successful and it is appropriate that the respondent contribute to the costs incurred in bringing his application before the Authority. However, it is not appropriate for the Authority to make awards for costs incurred in mediation or prior to the filing of an application in the Authority.

[5] The case was important to the applicant, the meeting was comfortably concluded within half a day due mainly to the failure of the respondent to appear and was not a complex matter. In all the circumstances and taking into account the principles relating to costs as set out in *New Zealand*

Airline Pilots Association v The Registrar of Unions [1989] 2 NZILR 550 and *Reid v Fire Services Commission* [1995] 2 ERNZ 38 I am of the view that an appropriate award of costs is \$1500.00 plus disbursement of \$250.00.

[6] I order Metro Motors Holdings 2003 Ltd to pay to David Kirkham the sum of \$1750.00 as a contribution to his costs and disbursements.

Marija Urlich
Member of Employment Relations Authority