

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2012] NZERA Christchurch 107  
5358451

BETWEEN                    MARIA KOLO'OFAI  
   Applicant  
  
A N D                            INVERCARGILL PASSENGER  
   TRANSPORT LIMITED  
   Respondent

Member of Authority:     David Appleton  
  
Representatives:            Kevin O'Sullivan, Advocate for Applicant  
   Janet Copeland, Counsel for Respondent  
  
Submissions Received:    10 April 2012 from Applicant  
   26 April 2012 from Respondent  
  
Date of Determination:    31 May 2012

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     By way of a determination dated 19 March 2012 the Authority found that the applicant had been unjustifiably dismissed and was entitled to remedies with no reduction for contribution. Her application for reinstatement was, however, declined and costs were reserved.

[2]     The applicant was represented by the New Zealand Tramways and Public Passenger Transport Employees Union Inc (the Union) and Mr O'Sullivan has claimed on behalf of the Union an award of costs totalling \$4,699.46, but seeks a contribution towards those costs of \$3,779.46.

[3]     The investigation meeting lasted one day. The Union states that it incurred costs of \$300.00 in relation to accommodation for two officials; toll calls in the sum of \$30.00; photocopying and sundry expenses in the sum of \$50; preparation time in

filing the statements of problem and witness statements in the sum of \$2,000.00 together with a further \$800 in respect of attendance at the investigation meeting.

[4] Counsel for the respondent submits that it was not reasonable for two officials from the Union to attend the investigation meeting and that, whilst she acknowledges that the Authority now applies a tariff of \$3,500 per day, submits that in this case a notional daily tariff should be \$2,000. Accordingly, she submits that it would be appropriate to award the sum of \$2,071.56 as a contribution towards the Union's costs.

[5] Counsel for the respondent also questions whether it is appropriate for the Union to claim costs in its own right when it was not a party in the proceedings but acknowledges that the applicant is not necessarily precluded from being awarded costs incurred by the Union in representing her. In the light of that acknowledgement, I believe that costs should be awarded. It is for the Union and the applicant to decide how they are apportioned between them.

[6] Counsel for the respondent also questions whether it is appropriate to factor in GST as part of an order for costs.

[7] I agree with counsel for the respondent that it is not appropriate to award costs in respect of the attendance by two Union officials as the matter before the Authority was both factually and legally simple. I also agree that it is not appropriate to factor in GST in this case where, as far as I understand it, the applicant will not be bearing these costs in the same way as she would if she had instructed a lawyer or advocate. Mr O'Sullivan does not make clear the basis upon which GST will be charged or who will be bearing the costs and, in the absence of that information, I am not minded to factor in GST.

[8] Counsel for the respondent also questions whether it was appropriate for Wellington/Auckland based officials to be instructed to represent the applicant. I disagree on this point, however. It is commonly the case that South Island based parties instruct solicitors from Wellington or Auckland and the ability to do so should not be fettered by the fear of not having costs awarded on that basis.

[9] All in all, the costs sought on behalf of the applicant have not been broken down with a great deal of detail and it is impossible to tell from Mr O'Sullivan's submission as to how they fall between the two officials who attended.

[10] As far as the daily tariff is concerned, the Authority now tends to award up to \$3,500 a day, in recognition of the increased legal costs that New Zealand legal practice has seen over the last few years. In this particular case, however, I do not believe that it is appropriate to use that as a starting point, given that preparation and attendance at the meeting incurred a total cost to the Union of \$2,800, plus GST. I will therefore use these sums as the starting point.

[11] I award costs in the following basis:

- Accommodation for one official only, at \$150.00;
- Attendance at the investigation meeting for one official only, assuming they are charged out at equal rates, at \$400.00;
- Preparation for the Authority investigation, at \$2,000.00, on the assumption that no or little duplication was involved in that;
- I also award the filing fee at \$71.56 and the photocopying, sundry expenses and toll calls at \$80.00.

[12] This amounts to a total of \$2,701.56.

David Appleton  
Member of the Employment Relations Authority