

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Serene Poh Choo Lee (Applicant)
AND Abigroup Asset Services New Zealand Limited (Respondent)
REPRESENTATIVES Christine Wright, Counsel for Applicant
Nicky Scott, Counsel for Respondent
MEMBER OF AUTHORITY Dzintra King
SUBMISSIONS RECEIVED 24 March 2006 from Respondent
12 April 2006 from Applicant
3 May 2006 from Applicant
26 May 2006 from Applicant
DATE OF DETERMINATION 15 August 2006

COSTS DETERMINATION OF THE AUTHORITY

The respondent successfully defended a personal grievance claim by the applicant and now seeks costs. Legal fees total \$23,996. Witness fees of \$400 are also sought.

The finalising of costs memoranda was complicated by the applicant's ill health which delayed her being able to give instructions. Mrs Wright submitted that as Ms Lee had only recently returned to full time work she was not in a position to make any contribution towards costs and that they should lie where they fell. I asked for further financial details to be supplied. The financial statements show that Ms Lee is earning an income and can afford to meet a reasonable costs award.

The principles applicable to an award of costs in the Authority have been set out in PBO Ltd (formerly Rush Security Ltd) v Da Cruz, unreported, AC2A/05, 9 December 2005. The Full Court set out a number of principles including:

- There is a discretion as to whether costs are awarded and the amount of the award;
- The discretion is not to be exercised arbitrarily;
- Costs are not to be used punitively;
- The Authority can consider whether all or any of the parties' costs were unnecessary or unreasonable;
- Costs generally follow the event;
- Awards will be modest;
- Frequently costs are judged against a daily notional rate;
- The nature of the case can influence costs.

Awards in the Authority are in the vicinity of \$1,000 to \$3,000 per day. The costs incurred by the respondent are very high and I can see no reason to depart from the general level of awards. The witnesses were not summonsed and I can see no reason to make an award for the costs incurred in their appearance at the Authority. The applicant is to pay to the respondent the sum of \$1,500.

Dzintra King
Member of Employment Relations Authority