

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

<b>BETWEEN</b>	Dayna Leever (applicant)
<b>AND</b>	Drake Personnel (NZ) Limited (respondent)
<b>REPRESENTATIVES</b>	Trish MacKinnon for the applicant Maurice O'Brien for the respondent
<b>MEMBER OF THE AUTHORITY</b>	Denis Asher
<b>SUBMISSIONS RECEIVED</b>	18 March & 11 April 2005
<b>DATE OF DETERMINATION</b>	12 April 2005

**DETERMINATION OF AUTHORITY: Costs**

**Employment Relationship Problem**

1. I earlier found in favour of Ms Dayna Leever's claim that she had been unjustifiably dismissed by the respondent – refer to determination WA 26/05, 17 February 2005. Costs were reserved.

**Submissions: the applicant's position**

2. The applicant says, amongst other things, that costs should follow the event – submissions received on 18 March 2005. There were two pre-investigation telephone conferences, one being required because of the Company's failure to meet timeframes it earlier agreed to. The investigation was postponed because of the Company's tardiness in filing documents. While the investigation took half a day preparation was no less than that required had it been of a longer duration. The Company's deliberately cavalier approach not only cost the applicant her employment but put her to unnecessary expense in having to pursue her personal grievance.
3. Ms Leever's legal costs total \$7,744 plus GST. Disbursements of \$145.78 plus GST were also incurred. Of these costs, \$1,540 plus GST should be deducted, being costs for attending mediation: *Trotter v Telecom Corp of NZ Ltd* [1993] 2 ERNZ 935, 937.
4. Having regard to the above, a reasonable contribution to the applicant's costs would be \$3,500 plus GST plus disbursements in full, i.e. \$4,101.50.

**Respondents' positions**

5. Because no written costs submissions were received from the Company, an Authority support officer therefore telephoned its representative, Mr Maurice O'Brien, to clarify whether it intended putting argument to the Authority in response to Ms Leever's costs claim. Mr O'Brien advised that the Company would not be making submissions as the matter had been covered in the submissions from counsel for the applicant, Ms Trish MacKinnon, and the respondent was content for the Authority to make its decision on what was before it – the Company had nothing further to add.

**Discussion and Findings**

6. I am satisfied that in this instance there is every reason for costs to follow the event.

7. I also agree with Mr O'Brien's reported statement that the matter of costs had been covered in the submissions on behalf of the applicant. I am therefore satisfied that the costs sought by Ms Leever's are reasonable and realistic.
8. I reach this conclusion by not only applying the well-known principles relating to costs awards but also because I accept the argument that the Company's approach to Ms Leever's' grievance caused her unnecessary additional costs.

### **Determination**

9. For the reasons set out above I find in favour of the applicant, Dayna Leever's', claim for costs of \$3,500.00 (three thousand and five hundred dollars) and disbursements of \$145.78 (one hundred and forty-five dollars and seventy eight cents) and direct the respondent, Drake Personnel (NZ) Limited to pay those monies to Ms Leever's.

**Denis Asher**

**Member of Employment Relations Authority**