

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Lyn Leslie (Applicant)  
**AND** Kate Sheppard Lifecare Centre Ltd (Respondent)  
**REPRESENTATIVES** Ian Thompson, Advocate for Applicant  
Michael Kirkland, Counsel for Respondent  
**MEMBER OF AUTHORITY** James Crichton  
**SUBMISSIONS RECEIVED** 30 September 2005  
13 October 2005  
**DATE OF DETERMINATION** 23 November 2005

**COSTS DETERMINATION OF THE AUTHORITY**

*The application for costs*

[1] By determination dated 20 July 2005, the Authority resolved the employment relationship problem between these parties by determining to dismiss Ms Leslie's application in its entirety.

[2] Costs were reserved by the Authority.

*The claim for costs*

[3] The respondent, the successful party contends that this is a matter where it is appropriate for costs to be awarded on an indemnity basis by reason of the allegation made by the respondent that the applicant's claim had no merit.

[4] For her part, the applicant Ms Leslie says through her advocate that costs should lie where they fall or, in the event that costs are awarded, she should be allowed to pay them by instalments.

*The principles*

[5] The principles that govern the awarding of costs in the employment jurisdiction have been usefully summarised in the Employment Court judgment of *Reid v New Zealand Fire Service Commission* [1995] 2 ERNZ 38.

[6] In a number of recent decisions, notably *Harwood v Next Homes Ltd* (unreported) AC 70/03, 19 December 2003, Travis J, and *Graham v Airways Corporation of New Zealand Ltd* (unreported) AA 39/04, 28 January 2004, Member Dumbleton, the average award of costs in the Authority is discussed.

[7] The principles that need to inform any decision on costs are these -

- (a) The fact that costs awards in the Authority are modest, consistent with the Authority's investigative role;
- (b) Some care needs to be taken in applying rules commonly used in traditional trial litigation to costs awards in the Authority.
- (c) The need to consider the reasonableness of any costs sought;
- (d) The general rule that costs should follow the event;
- (e) The fact that costs are discretionary;
- (f) Average awards of costs for a one day investigation meeting ought typically be between \$1,000 and \$1,500.

***Determination***

[8] This was a matter which was dealt with in a half day meeting so in principle a contribution to costs in the order of \$500 would be appropriate on an average basis.

[9] While I accept that the respondent was completely successful in this matter, I am not disposed toward costs on an indemnity basis as the respondent requests. The applicant is entitled to bring her claim to the Authority and have it considered.

[10] I direct that the applicant pay to the respondent the sum of \$500 as a contribution to the respondent's costs.

[11] I observe that the applicant is not in a strong financial position and accordingly direct that the parties agree on an appropriate basis for this sum to be paid by the applicant to the respondent, over time.

James Crichton  
Member of Employment Relations Authority