

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 66A/08

5114348

BETWEEN Sarah Maguire
Applicant

AND Drake NZ Limited
Respondent

Member of Authority: Denis Asher

Representatives: Brigitte Shone for Ms Maguire
Maurice O'Brien for the Company

Submissions received: By 3 November 2008

Determination: 11 November 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 13 May 2008 (WA 66/08) I found in favour of Ms Maguire's and awarded her one month's pay (for a notice period) and compensation for hurt of \$2,000. Costs were reserved.

[2] In the same determination I expressed a preliminary view that, unless good reason was advanced to the contrary and subject to costs actually incurred, Ms Maguire having succeeded, and costs typically following the event, the applicant was entitled to expect a contribution to her costs of \$1,500 plus the filing fee of \$70.

Ms Maguire's Costs Claim

- [3] The applicant seeks full legal costs based on the following:
- [4] In a letter dated 5 May Ms Maguire offered to settle the matter for one month's pay plus her then legal costs of \$750 plus GST. The company rejected her offer. Ms Maguire was therefore obliged to incur unnecessary and additional costs in pursuing her successful claim.
- [5] Given that the settlement amount offered was significantly less than what was subsequently awarded Ms Maguire seeks full costs.
- [6] The company has refused to pay full costs but has paid \$1,500 as a result of the Authority's indication of that amount as a likely award.
- [7] Ms Maguire now seeks \$2,160 plus GST in respect of legal costs incurred up to and including the hearing, \$677 costs incurred subsequent to the hearing including the costs application, \$70.93 plus GST being her counsel's service fee, and the \$70 filing fee.

The Company's Costs Claim

- [8] The company agrees with the authority's indicative comments on contribution to costs. This was a short hearing and \$1,500 has been paid already to Ms Maguire.
- [9] Any further costs incurred by the applicant were unnecessary as there was no justification for the applicant to seek costs beyond the authority's normal practice.
- [10] The offer made by Ms Maguire was at the last minute.

Findings

- [11] The Authority's discretion with which to award costs is now well settled and typically follow the event: *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.

- [12] Ms Maguire's offer of 5 May, if accepted, would have saved her the apparent costs of a half day investigation, i.e. \$1410, and the cost of pursuing the costs matter further, i.e. another \$677. As it happened, the applicant was subsequently awarded significantly more than what she was prepared to settle for. However, it cannot be said that the company's position stood no prospect of success and it promptly paid Ms Maguire the indicative costs of \$1,500.
- [13] I am therefore not prepared to depart from the authority's normal range of costs awards for what proved to be a half day investigation.
- [14] Having regard to the parties' costs submissions and the above I am satisfied that Ms Maguire has already received an appropriate contribution to fair and reasonable costs and that there is no reason to depart from the indicative costs figure already provided to the parties other than to require payment of the \$70 filing fee.

Determination

- [15] The company is to pay to Ms Maguire her filing fee of \$70 (seventy dollars).
- [16] I apologise to the parties for the delay in determining this matter but the authority's file record indicates that it was not until 3 November that support staff received confirmation no further submissions would be received.

Denis Asher
Member of the Employment Relations Authority