

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Andrew Marlow (Applicant)
AND Gorrie Fuel (SI) Limited (Respondent)
REPRESENTATIVES Grant Tyrall, Counsel for Applicant
Ian Thompson, Advocate for Respondent
MEMBER OF AUTHORITY James Crichton
SUBMISSIONS RECIEVED 21 April 2005
DATE OF DETERMINATION 29 April 2005

COSTS DETERMINATION OF THE AUTHORITY

- [1] By determination dated 29 March 2005 the authority found that Mr Marlow had a personal grievance with Gorrie Fuel (SI) Limited and an award of compensation was ordered.
- [2] Costs were reserved and the parties have been unable to resolve those issues. Both representatives have filed helpful memoranda in respect to costs.
- [3] Costs are of course a discretionary remedy and it is for the Authority to determine what an appropriate level ought to be. In Graham and Airways Corporation of New Zealand Limited (Unreported AA39/04 28 January 2004) member Dumbleton suggested that average awards of costs would fall between \$1000.00 and \$1500.00 for a one day investigation meeting in the Authority.
- [4] The same member in Wilson and Grey Power Publishing Company Limited (AA58/03 4 March 2003) advanced the view that generally awards of costs in the Authority are modest because of the investigatory nature of the Authority's work.
- [5] The fundamental question in an award of costs will be to arrive at a figure that makes a fair and reasonable contribution as between the parties.
- [6] Mr Marlow seeks an award of costs against Gorrie Fuel (SI) Limited in the sum of \$2333.00 plus GST. This submission is for costs on an indemnity basis as that figure is the amount charged to Mr Marlow by his counsel.
- [7] The argument for costs to be granted on an indemnity basis revolves around the applicants claim that the matter was straight forward and that numerous attempts were made by the applicant to resolve matters including, without prejudice except as to costs, proposals.
- [8] The respondent argues that decided cases preclude a caulderbank letter flowing from an applicant to a respondent. Notwithstanding that submission, the Authority is still entitled to

consider the attempts that a successful party has made to resolve a straight forward matter and to take into account settlement proposals that have been proffered but not accepted.

[9] The respondent suggests that a figure of \$500.00 would be a fair and reasonable contribution to the applicant's costs and describes the claim for \$2333.00 plus GST as "outrageous."

[10] This was a matter that was dealt with in 3 hours or so of hearing time in the Authority and on that basis, the applicant's legal costs incurred are absolutely reasonable.

[11] It is also true that the applicant made a number of attempts to resolve the matter by agreement prior to hearing but was not successful.

[12] This is not a case in my opinion where indemnity costs can appropriately be contemplated but a reasonable contribution to the applicant's costs is appropriate and I award a figure of \$1000.00 as a contribution by the respondent to the applicant's costs.

James Crichton
Member of Employment Relations Authority