

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Inez Masefield (Applicant)  
**AND** Tim Watkins & Nicola Watkins (Respondents)  
**REPRESENTATIVES** Garry Pollak, for the applicant  
Jo Douglas, for the respondents  
**MEMBER OF AUTHORITY** Alastair Dumbleton  
**COSTS SUBMISSIONS** 21 and 25 January 2005  
**RECEIVED**  
**DATE OF DETERMINATION** 10 February 2005

**DETERMINATION OF THE AUTHORITY AS TO COSTS**

[1] At the end of its substantive determination dated 1 December 2004 (issued under AA 390/04) resolving this claim of unjustified dismissal, the Authority recorded that as Mrs Masefield had been successful she was in principle entitled to an award of costs to meet her legal expenses. As costs are not to be awarded at a higher level than those actually incurred, I required Mrs Masefield's then representative Ms Kaur to send the Authority within 14 days advice as to the legal fees billed and an explanation of how they had been assessed. The Authority also advised of its intention to seek a response from the Watkins to any costs application.

[2] Nothing further was heard from Mrs Masefield or Ms Kaur until 21 January 2005 when Mr Pollak sent in a submission on her behalf. In it he advised that he had been instructed to act in the matter instead of Ms Kaur. He noted that his submission was being made considerably outside the 14 day period allowed for that by the Authority. Clearly this was not his fault as he had not been instructed until 18 January 2005.

[3] I decline to award costs for two reasons, both of which are relied on by the Watkins representative Ms Douglas in opposing the application. The first is significant delay. Whether this was caused by failure or error on the part of Ms Kaur, I do not know. If that was the case, Mrs Masefield will have to take it up with her. If the 14 day period for applying was proving too tight for some reason, it would have been a simple matter to get from the Authority an extension of time. This was not sought. The second reason is the failure (not Mr Pollak's fault obviously) to supply the information requested. It was submitted that precise information as to fees charged to Mrs Masefield was not able to be provided, but that her costs had been "in the vicinity of around \$1,500 to \$2,000." On that basis an award of "approximately \$2000" has been sought. Clearly if actual costs were \$1,500 but the award was \$2,000, Mrs Masefield would receive a \$500 windfall at the unjust expense of the Watkins.

[4] I do not understand why Mrs Masefield cannot or will not say what fees if any she has been billed for the services of her representative during the investigation of her claim. In the absence of that information the Authority is not prepared to guess.

[5] Accordingly, no order for costs is made.

A Dumbleton  
**Member of Employment Relations Authority**