

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Gina Maxwell (Applicant)
AND Brown Miller Press Limited (Respondent)
REPRESENTATIVES John Shadbolt, Advocate for Applicant
Marc Potter, Advocate for Respondent
MEMBER OF AUTHORITY R A Monaghan
MEMORANDA RECEIVED 1 and 14 February 2005
DATE OF DETERMINATION 15 February 2005

DETERMINATION OF THE AUTHORITY ON COSTS

- [1] In a determination in the above dated 11 January 2005 I found Ms Maxwell had a personal grievance in respect of her unjustified dismissal. Costs were reserved.
- [2] Mr Shadbolt, for Ms Maxwell, has asked the Authority to determine the matter. He said Ms Maxwell had incurred costs of \$1,500 and sought a contribution in the sum of \$1,000.
- [3] Mr Potter, for Brown Miller, referred to an understanding that Mr Shadbolt was working on a contingency basis and assumed Mr Shadbolt's share of Ms Maxwell's award would cover her costs. That understanding is not an accurate reflection of Ms Maxwell's legal entitlements in respect of costs.
- [4] Very briefly, the successful party in litigation is entitled on the face of the matter to the full benefit of any award made in that party's favour. Such awards are not set with reference to costs of the litigation – they are set with reference to the losses proved in association with the successful party's claim.
- [5] Consideration of costs comes later and separately. The successful party is then entitled to seek a contribution to the costs that party incurred in bringing the litigation, reflecting the practical reality that the costs of litigation eat into any benefits obtained. The entitlement amounts to a separate and additional claim to the substantive matter already dealt with. A number of tests are applied to determine what the contribution should be, but only in appropriate circumstances does the amount of any monetary award in favour of the successful party form part of the calculation. Those circumstances do not apply here.
- [6] As for the relevance of Ms Maxwell's advocate being paid on a contingency basis, if he was, that does not affect the approach to assessing costs. The payment of a contingency-based fee is still a cost of professional representation. Accordingly I accept the submission that Ms Maxwell is

entitled to a contribution to her costs and have no reason to question the advocate's advice that costs of \$1,500 were incurred.

[7] Mr Shadbolt's request for a contribution of \$1,000 was reasonable and I accept it.

[8] Brown Miller is therefore ordered to contribute to Ms Maxwell's costs in the sum of \$1,000.

R A Monaghan
Member, Employment Relations Authority