

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 238A/07
5073839

BETWEEN KEVIN MCDONALD
 Applicant

AND ALLEN MOTORS
 NORTHLAND LIMITED
 Respondent

Member of Authority: R A Monaghan

Representatives: B Quarrie, counsel for Applicant
 M Broadbelt, advocate for Respondent

Submissions received: 5 September 2007 from Respondent
 25 September from Applicant

Determination: 28 September 2007

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination of the above personal grievance, dated 8 August 2007, I found that Mr McDonald was not dismissed, but that his employment ended by his resignation. Costs were reserved and the parties have filed submissions on the matter.

[2] The advocate for the respondent sought full costs or a considerable contribution to costs, citing a figure of \$8,848.76. He relied in particular on the lack of merit in Mr McDonald's claim.

[3] Counsel for the applicant submitted that a contribution at the lower end of the scale would be appropriate. He seemed to be relying on an argument that the respondent added to the costs it incurred by calling witnesses who were not necessary to determining whether there was a resignation or a dismissal.

[4] The case for the respondent was fully and carefully prepared and I do not accept that the witnesses called on its behalf were not necessary. On the contrary I appreciate the effort the respondent made to properly present its argument.

[5] However there is nothing in the respondent's submissions or the conduct of the matter itself to support an award of full solicitor and client costs. Mere weakness in the other party's position is not sufficient. Applying the usual principles, I take into account that the investigation meeting lasted for under a full day and neither party added unnecessarily to its length or complexity. Since the respondent was the successful party, the Authority would in general terms consider awarding a contribution to the respondent's costs in the range of \$2,500 - \$3,000.

[6] I see no reason to depart from that range. Nor do I see any reason to consider an award at the low end of the range. In addition it is fair to recognise the costs incurred by the respondent in preparing as fully as it did, and thereby assisting the efficient conduct of the investigation, by making an award at the higher end.

[7] Mr McDonald is therefore ordered to contribute to the respondent's costs in the sum of \$3,000.

R A Monaghan

Member of the Employment Relations Authority