

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Teresa McDonald (Applicant)
AND Bayliss Sharr & Hansen Chartered Accountants (Respondent)
REPRESENTATIVES Timothy J Twomey, Counsel for Applicant
Keith Owen, Advocate for Respondent
MEMBER OF AUTHORITY James Crichton
SUBMISSIONS RECEIVED 29 September 2005
17 October 2005
20 October 2005
DATE OF DETERMINATION 22 November 2005

COSTS DETERMINATION OF THE AUTHORITY

The application for costs

[1] By determination dated 19 July 2005, the Authority resolved the employment relationship problem between these parties by determining that Ms McDonald was unjustifiably constructively dismissed.

[2] Costs were reserved by the Authority.

The claim for costs

[3] Ms McDonald seeks *a substantial award* of costs on the basis that, because the applicant is legally-aided in this matter, she has an obligation to reimburse the Legal Services Agency for her grant of aid.

[4] The applicant's actual costs at the appropriate legal aid rate are \$2,726 and so it is that sum which she must reimburse to the Legal Services Agency whatever sum is awarded her as a result of this costs determination.

[5] For its part, the respondent firm, in its costs submissions, seeks details of the actual grant of legal aid (which has now been provided by the applicant) but accepts that the Authority may direct that a contribution to the applicant's costs should be paid.

The principles

[6] The principles that govern the awarding of costs in the employment jurisdiction have been usefully summarised in the Employment Court judgment of *Reid v New Zealand Fire Service Commission* [1995] 2 ERNZ 38.

[7] In a number of recent decisions, notably *Harwood v Next Homes Ltd* (unreported) AC 70/03, 19 December 2003, Travis J and *Graham v Airways Corporation of New Zealand Ltd* (unreported) AA 39/04, 28 January 2004, Member Dumbleton the average award of costs in the Authority is discussed.

[8] The principles that the Authority ought to consider in respect to costs are as follows:

- (a) awards of costs in the Authority are modest consistent with the Authority's investigative mode;
- (b) the rules commonly applied in traditional trial litigation do not marry well to the investigative approach of the Authority;
- (c) the need to consider the reasonableness of any costs sought;
- (d) the general rule that costs should follow the event;
- (e) costs are discretionary; and
- (f) average awards of costs for a one day investigation meeting will be between \$1,000 and \$1,500.

Determination

[9] This was a matter which was dealt with in a half day by the Authority and not a full day as the respondent alleged. On that basis then, an average contribution to the costs of the applicant would be \$750.

[10] The involvement of the Legal Services Agency is in my judgment neutral. The Agency simply indemnifies a successful party and Ms McDonald is effectively placed in the same position as any other successful party would be.

[11] The respondent is to pay the applicant the sum of \$750 as a contribution to the applicant's costs.

James Crichton
Member of Employment Relations Authority