

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Ken Merchant (Applicant)  
**AND** Department of Corrections (Respondent)  
**REPRESENTATIVES** Mark Ryan, for Applicant  
Katie Elkin for Respondent  
**MEMBER OF AUTHORITY** Y S Oldfield  
**SUBMISSIONS** 4 July, 6 July 2005  
**DATE OF DETERMINATION** 23 August 2005

**DETERMINATION OF THE AUTHORITY AS TO COSTS**

- [1] In a determination dated 7 June 2005 I concluded that the applicant did not have a personal grievance and invited the parties to discuss costs. They have been unable to agree and now request that I determine the matter.
- [2] The respondent's actual costs were quantified as \$25,425.00 legal fees plus \$669.00 general disbursements and \$1,650.00 travel costs for witnesses. As the successful party it seeks a contribution to costs of \$6,750.00 inclusive of GST and \$2,250.00 in respect of disbursements.
- [3] I was told that the claim was calculated as follows. First of all, the investigation meeting occupied four hours (which is correct) and Counsel's 'blended' hourly rate was \$300.00 plus GST, so the cost of representation at the meeting was \$1,350.00 inclusive of GST. Next it was argued that in the case of a short meeting the ratio of preparation time to hearing time is likely to be higher than usual. Hence it was submitted that a multiplier of four should be applied to the hearing time in order to arrive at the total time spent in preparation and representation. This gives a figure of \$6,750.00, which the respondent argues is a reasonable claim since it represents only a small portion of the actual fees.
- [4] In response, Counsel for the applicant says that the matter was not complex but was a straightforward exercise of contractual interpretation. Little evidence was required and the investigation meeting was brief. Costs should not be oppressive and to award costs at the level sought by the respondent will cause the Applicant undue financial hardship. Mr Ryan also recorded that he found it "astonishing" that the respondent's costs could have reached the level they did. Mr Ryan submitted that a reasonable level of costs would be \$1,500.00.

**Determination**

- [5] Although I would not characterise the substantive matters here as being entirely straightforward, I do share Mr Ryan's surprise at the level of costs generated in relation to the respondent's case. Both representatives assisted the Authority with able preparation of documentary evidence and brief witness statements. I was also provided with helpful and thorough closing submissions. All this had the effect of making a short and efficient meeting possible. However I cannot see how (even with three telephone conferences) this could have required the 80 hours asserted.
- [6] Nonetheless the respondent is entitled to a contribution to its costs. I begin by calculating what would be a reasonable level of costs using the same method as the respondent, but substituting a multiplier of three rather than four. This gives an estimate of \$4,050.00. Two-thirds of this, \$2,700.00, is an appropriate starting point when considering what would be a reasonable contribution to costs. In addition there are disbursements to be considered and I find these reasonable given the need to bring witnesses in from out of town.
- [7] Together costs of \$2,700.00 and disbursements of \$2,250.00 make for a very high award in a matter that required a meeting of only half a day. I am not persuaded that there are any exceptional features in this case to warrant going beyond these amounts.
- [8] Mr Merchant is ordered to pay to the Corrections Department the sum of \$2,700.00 as a contribution to its costs along with \$2,250.00 disbursements.**

Y S Oldfield  
Member of Employment Relations Authority