

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 27A/08
5092168

BETWEEN CHRISTINA MORRISON
Applicant

AND COVA LIMITED
Respondent

Member of Authority: Vicki Campbell

Representatives: Nicholas Carter for Applicant
Brian Stephenson for Respondent

Submissions Received: 9 and 30 April 2008 from Applicant
23 April and 12 May 2008 from Respondent

Determination: 26 May 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 31 January 2008 I found that Ms Morrison had been unjustifiably disadvantaged in her employment as a result of being suspended, but did not find Ms Morrison had been unjustifiably dismissed.

[2] In my determination I reserved the question of costs and invited the parties to resolve the matter between them. They have been unable to do so and I am now in receipt of memorandum from both parties.

[3] The following principles are appropriate where the Authority is exercising its discretion in relation to costs (*PBO Ltd (formerly Rush Security Ltd) v Da Cruz*, [2005] 1 ERNZ 808):

- There is a discretion as to whether costs should be awarded and what amount;
- The discretion is to be exercised in accordance with principle;
- The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority;
- Equity and good conscience is to be considered on a case by case basis;
- Costs are not to be used as a punishment or as an expression of disapproval of an unsuccessful party's conduct although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award;
- It is open to the Authority to consider whether all or any of the parties costs were unnecessary or unreasonable;
- That costs generally follow the event;
- That without prejudice offers can be taken into account;
- That awards will be modest;
- That frequently costs are judged against a notional daily rate;

- The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[4] Mr Stephenson submits that costs should be awarded to the respondent given that Ms Morrison did not win the case advanced by Ms Morrison in her statement of problem.

[5] During the course of the investigation meeting I advised both counsel that I may consider finding a grievance other than that alleged pursuant to section 122 of the Employment Relations Act 2000. Indeed, I did find that although Ms Morrison had not been unjustifiably dismissed I did find that her suspension was unjustified and awarded remedies amounting to \$2,556.00.

[6] I have considered the submissions made by the parties, including the offer made by Ms Morrison's representative, without prejudice, except as to costs, on 18 October 2007 to settle the matter for \$6,500.

[7] Both parties were partially successful. In all the circumstances, I do not believe it would be equitable for costs to be awarded to either party in this case. Costs will lie where they fall.

Vicki Campbell
Member of Employment Relations Authority