

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2011] NZERA Auckland 306  
5295023

BETWEEN                      AILSA MURRAY  
   Applicant  
  
AND                              FULLERS BAY OF ISLANDS  
   LIMITED  
   Respondent

Member of Authority:        Alastair Dumbleton  
  
Submissions Received        22 June and 7 July 2011  
  
Determination:                14 July 2011

---

**COSTS DETERMINATION OF THE AUTHORITY**

---

[1]     The Authority issued determinations on 17 November 2010 and 9 June 2011 resolving a dispute about the interpretation, application or operation of the parties' employment agreement in the first, and a personal grievance and claim of breach of good faith in the second.

[2]     Following those determinations submissions have been received from the parties on the question of costs which was reserved by the Authority.

[3]     The investigation included a meeting lasting less than one day at which evidence was taken from the applicant Mrs Ailsa Murray and several witnesses for the respondent Fullers Bay of Islands Ltd. The Authority also received comprehensive written submissions covering separately the dispute and the personal grievance and breach claims.

[4]     In the overall result, the Authority gave an interpretation of the collective employment agreement in favour of Mrs Murray and the employment status she had contended for. The grievance and other claims were resolved in favour of Fullers and

no orders were made against the company requiring payment of any monetary sum to Mrs Murray or compliance with any provision of the collective employment agreement.

[5] The Authority's investigation commenced when a statement of problem was lodged on behalf of Mrs Murray in June 2010. The parties had previously attended mediation which had not resolved their differences. Those differences had emerged a year earlier in May 2009 when Mrs Murray's union, the National Distribution Union, by letter raised with Fullers a personal grievance on her behalf. The remedies sought to resolve that grievance were:

- Reinstatement of Mrs Murray as a seasonal employee under the collective employment agreement; and
- \$6,000 compensation for humiliation and injury to feelings.

[6] The union's letter concluded with the advice that "Ailsa's preference is to be reinstated," indicating that the payment of compensation was not to be viewed as an essential part of any resolution, or not payment of the full \$6,000.

[7] Fast forwarding from 2009, when the grievance was raised, to now when the Authority has issued determinations resolving the dispute and the grievance and breach claims, it is a surprising revelation from the costs submissions that Fullers expended over \$27,000 in legal fees on the investigation. The remedies of reinstatement, to seasonal/casual employment, and a maximum of \$6,000 compensation had been claimed (on a negotiable basis it could be expected) as the most required to settle the grievance.

[8] Fullers asks that in considering the costs application the Authority takes into account a "without prejudice save as to costs" offer made to Mrs Murray in June 2010, shortly after she lodged her statement of problem. Fullers offered then a ferry pass for the Paihia – Russell trip for six months, having a value of about \$1,420, and an overnight voyage on a cruise boat around the Bay of Islands for Mrs Murray and her husband, normally costing \$498.

[9] Greater value lay in an offer Fullers made to reinstate Mrs Murray under the collective employment agreement. She declined that offer because in her view she remained employed under that agreement. In its first determination the Authority

viewed it as a factor in the employer's favour to be taken account of when assessing remedies that Fullers had by its offer sought to substantially repair any harm caused to Mrs Murray by its earlier actions.

[10] The Authority drew attention in the second determination to the limitations on the quantum of awardable remedies because of the relatively few days Mrs Murray had been working each year as a seasonal/casual employee under the collective agreement.

[11] In its second determination the Authority referred again to the offer made by Fullers to reinstate Mrs Murray. It found this had been a genuine offer that was rejected by Mrs Murray, who claimed it had been unnecessary as she had always remained subject to the collective agreement. Her view was seen by the Authority to be inconsistent with her claim that she had been dismissed. Mrs Murray's rejection of the claim also demonstrated something of an intractable and non-conciliatory approach to resolving an employment relationship problem by Mrs Murray. The Authority found that she had to carry some blame for the situation giving rise to her claim that she was unjustifiably dismissed.

[12] Fullers seeks an award of costs of \$8,000 as a reasonable contribution to its considerably larger actual costs of just over \$27,000. On behalf of Mrs Murray it is submitted that costs should lie where they fall in the circumstances, which include the resolution of the interpretation issue in her favour by the Authority.

[13] The Authority has not been told whether her union is supporting Mrs Murray financially by indemnifying her against costs, and there is no information about her means although the Authority is aware that she lives in the Bay of Islands with her husband in retirement or semi-retirement.

[14] Although the interpretation question underlying the grievance and bad faith claims was answered in Mrs Murray's favour the overall resolution of this employment relationship problem lay in getting the employment relationship restored. Mrs Murray was given the opportunity for that to happen but passed over it, unreasonably in my view. On that basis she should reimburse some of Fullers legal costs.

## **Determination**

[15] In the circumstances I consider that an award of \$3,750 costs is appropriate. Mrs Murray is ordered to pay that sum to Fullers pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

A Dumbleton  
**Member of the Employment Relations Authority**