

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Rick O'Shea (Applicant)
AND Cardax (International) Limited (Respondent)
REPRESENTATIVES Bryce Quarrie, Counsel for Applicant
Mark Hammond, Counsel for Respondent
MEMBER OF AUTHORITY Janet Scott
INVESTIGATION MEETING 20 February 2004
DATE OF DETERMINATION 4 February 2005

COSTS DETERMINATION OF THE AUTHORITY

The applicant brought a personal grievance claim alleging unjustified dismissal. The applicant was unsuccessful in that claim.

The respondent seeks \$3500 in costs – this sum being significantly less than the costs it claims have been incurred in the matter.

There has been no submission made on the applicant's part on the matter of costs

The power to award costs is contained in the Second Schedule of the Employment Relations Act 2000. The general principles to be applied in cost applications are set out, in case law including *NZALPA v Registrar of Unions* (1989) NZILR,550, *Okeby v Computer Associates (NZ) Limited* [1994] 1 ERNZ 613 and *Reid v New Zealand Fire Service Commission* [1995] 2 ERNZ 38. The criteria to be taken into account include the importance of the case to the parties, the way the case was conducted, the conduct of the parties at the hearing, the amount of time required for effective preparation over and above that which would ordinarily be inferred, whether arguments lacking in substance were advanced or whether unduly legalistic and technical points were taken and the actual costs incurred.

Determination

The applicant in this matter has engaged in some highly dubious conduct and it should be recorded his representative played no part whatsoever in this conduct and has acted honestly throughout.

The conduct engaged in has incurred the respondent in additional time and cost in attempting to verify the authenticity or otherwise of a highly suspect email communication.

In all the circumstances of this case the respondent's claim for costs is very reasonable and I direct the applicant to pay to the respondent the sum of \$3500 to reimburse it for the costs incurred.

Janet Scott
Member of Employment Relations Authority