

(excluding GST). A further \$1,000 has been incurred by KME in trying to settle the matter of costs, as had been directed by the Authority, and in preparing and filing the costs application.

[4] I note that in the breakdown of KME's costs supplied to the Authority there is at least \$1,600 that is expressed to be in relation to mediation. Those are not costs of an investigation, and there are obvious reasons why the Authority cannot look closely at the mediation to see what if any costs may be appropriate in relation to it.

[5] No reasons have been given why the award of costs has been sought by KME on a solicitor-client, or full indemnity, basis. That level of award is usually reserved for exceptional cases, which this one is not.

[6] I consider also that in the personal circumstances of Ms Peleti as disclosed by the investigation meeting an award of \$15,000 costs would amount to punishment to some degree and have the effect of imposing a considerable restraint on the right of access of employees to the personal grievance remedy.

[7] I intend to follow the approach taken by the Authority in the case referred to by Mr Edwards of *Graham v. Airways Corporation of New Zealand Ltd*, ERA Auckland AA39/04, 28 January 2004. That approach was to consider the actual legal costs and expenses of the successful party, KME in this case, then decide how much of those costs are reasonable and then determine what proportion of the reasonable costs ought to be met by the unsuccessful party, Ms Peleti.

[8] I accept that Mr Edwards' hourly rate at \$200 excluding GST was entirely reasonable for the case.

[9] I also take note of the disparity between the ways the parties went about trying to resolve Ms Peleti's complaint after she was dismissed. On her side a combative, confrontational and overly litigious approach was taken which in my view is likely to have exacerbated the dispute and restricted the possibilities for its resolution in a cost effective and acceptable way to both parties, as far as that might have been possible.

[10] The approach of Ms Peleti, with the advice of her solicitors it appears, was to launch an application in the Authority without first raising a grievance. This was wrong and totally contrary to the objects of the Act in relation to dispute resolution generally and the resolution of personal grievances in particular. Also, instead of

getting on and facilitating the efficient conduct of an investigation meeting, time was wasted with preliminary points needlessly raised by Mr O'Brien on Ms Peleti's behalf.

[11] KME on the other hand made reasonable attempts to resolve the claim, despite the irregular way it had been commenced, by making a Calderbank offer although this was rejected.

[12] Those factors should be taken into account by the Authority in assessing a contribution to costs that is reasonable.

[13] In my view \$7,500 is appropriate. On a tariff basis perhaps an award closer to \$9,000 would be justified for an investigation meeting of three days, but I am satisfied in the circumstances that a degree of difficulty probably by Ms Peleti in paying a high award should be factored into the calculations.

[14] Pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000, Ms Shantelle Peleti is therefore ordered to pay \$7,500 in costs to KME Limited.

A Dumbleton
Member of the Employment Relations Authority