

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Ngaire Powdrill (Applicant)
AND B L & J A McGinty Limited (Respondent)
REPRESENTATIVES Richard Mark, Counsel for Applicant
Andrew Golightly, Counsel for Respondent
MEMBER OF AUTHORITY Leon Robinson
MEMORANDA RECEIVED 3 March 2005
11 March 2005
DATE OF DETERMINATION 14 March 2005

DETERMINATION OF THE AUTHORITY

[1] By a Determination dated 24 November 2004, the Authority invited the parties to resolve the question of costs between them. They were unable to do so and both parties have now filed memoranda to assist the Authority in the exercise of its discretion.

[2] The employer by its Counsel now seeks an award of costs in the sum of \$4,000.00 as the successful party. The employee's Counsel resists the application and says that an award ought to be made to the applicant Ms Powdrill or alternatively, that costs ought to be left to lie where they fall. Counsel says the employer's costs are excessive.

[3] The investigation meeting proceeded over less than one day at Kerikeri.

[4] The employer's actual costs in respect of its advocate's services are \$11,235.24. That sum includes costs of representation of \$9,456.04. The difference is comprised of mileage from Kaikohe to Kerikeri and for Mr McGinty and two other witnesses' time. I am not advised how that representation sum is composed or whether it includes services up to and including mediation. I agree with Counsel that it is excessive. I decline to make any award in respect of witness time and dismiss too the claim for mileage as unverified.

[5] I am advised of Ms Powdrill's means or her ability to meet a costs award against her. She remains unemployed and gave evidence at the investigation meeting of financial hardship. I accept responsible Counsel's submission that Ms Powdrill has limited means to meet any costs award.

[6] Ms Powdrill's claim for wage arrears was settled between the parties in the latter part of the investigation meeting. Ms Powdrill should not have had to seek the Authority's assistance to obtain her legal entitlements. I commented too in the substantive determination on other compliance matters which required the employer's attention.

[7] Taking those last cited matters into account, and in this equity and good conscience jurisdiction, I decline to make an award of costs against Ms Powdrill.

[8] Neither party will have costs against the other. **The respondent's application for the exercise of the Authority's discretion in its favour is declined. There will be no order for costs.**

Leon Robinson
Member of Employment Relations Authority