

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 63A/07  
5034986

BETWEEN                      JACQUELINE PRESTON  
   Applicant  
  
AND                              COMTEC COMMUNICATIONS  
   LIMITED  
   Respondent

Member of Authority:      James Crichton  
  
Representatives:            Tony Shaw, Counsel for Applicant  
   Hugh Matthews, Counsel for Respondent  
  
Submissions Received:    18 July 2007 from applicant  
   No submissions from respondent  
  
Costs Determination:      22 August 2007

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**COSTS DETERMINATION OF THE AUTHORITY**

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**The application for costs**

[1] By determination dated 22 June 2007 the Authority resolved the employment relationship problem between these parties by determining that Ms Preston had a personal grievance by reason of a constructive dismissal.

[2] Costs were reserved.

**The claim for costs**

[3] Ms Preston, through counsel, as the successful party, seeks a contribution to her costs in the sum of \$2,500. On the basis of the submissions of counsel, that would represent a little under 50% of the costs actually incurred in the successful application to the Authority.

[4] There is nothing in the submission filed on behalf of Ms Preston which identifies any matters particularly out of the ordinary in relation to the investigation meeting or the preparation for it save for the contention made in those submissions that one of the witnesses produced by Comtec Communications Limited gave evidence which, in the result, did not prove to be of particular probative value in investigating the employment relationship difficulties between the parties.

[5] I accept the contention made on Ms Preston's behalf that that particular witness's evidence was not especially helpful to the Authority in reaching a decision on the matters in contention between the parties but certainly make no criticism of Comtec Communications Limited for producing the witness. It is however the position that, given the volume of the evidence advanced by that particular witness, there is an argument for the view that Ms Preston's counsel was put to additional time and expense in reviewing the material advanced by the subject witness in preparation for the investigation meeting. It is appropriate that that factor be taken into account in reaching a decision in respect to an award of costs.

### **The legal principles**

[6] The recent decision of the Full Bench of the Employment Court in *EBO Limited v. Da Cruz* ACA 2A/05 sets out the relevant principles.

[7] In particular, Judge Shaw in giving the decision of the Court makes it clear that the principles usually identified by the Authority in making costs awards are *consistent with (the Authority's) functions and powers*.

[8] In addition, Her Honour observes that there is *nothing wrong in principle with the Authority's tariff based approach* so long as it is not applied rigidly and without regard to the facts of the particular case.

### **Discussion**

[9] With the exception of the issue about one of the respondent's witnesses, which I have referred to above, nothing particularly in the conduct of the investigation meeting, or the preparation for it, leads me to conclude that there was anything out of the ordinary about this particular matter and the way it was dealt with.

[10] It follows that it is a suitable matter for consideration of the *tariff based approach* which the Authority frequently uses in dealing with matters of costs.

[11] Given the increase over time in the daily rate awards made for one day investigation meetings, it seems now reasonable to assert that an average for a one day investigation meeting would be around \$2,500 or perhaps a little more.

[12] In the particular circumstances of this case, the matter was dealt with in a little under a full day's hearing and, as I have already indicated, I do think it appropriate to have some regard to the usefulness of a particular witness who

was advanced by the respondent employer. In that latter regard, I am accepting the point made by counsel for Ms Preston to the effect that the production of that witness and his evidence caused some additional cost to Ms Preston and that ought to be taken into account in making an award of costs.

[13] Having regard to the issue just referred to and the average cost awards for a one day hearing in the Authority, I accept the claim made by Ms Preston for an award of costs in the sum of \$2,500. I think that figure is a reasonable award in all the circumstances.

### **Determination**

[14] This was a matter which was dealt with at an investigation meeting that took most of one sitting day and one of the witnesses produced by the employer gave evidence which was both extensive and, in the result, unhelpful to the Authority in resolving the employment relationship problem between the parties.

[15] Both of those factors need to be taken into account and I now do that in awarding to Ms Preston a contribution to her costs in the sum of \$2,500 which Comtec Communications Limited is to now pay to her.

James Crichton  
Member of Employment Relations Authority