

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2011] NZERA Auckland 162  
5163767

BETWEEN                      MARIA REW  
   Applicant  
  
AND                                FARE CAFÉ LIMITED  
   Respondent

Member of Authority:      Yvonne Oldfield  
  
Representatives:            David Flaws for Applicant  
   Bill Guest for Respondent  
  
Submissions received:      25 July 2010 from Respondent  
   5 February 2011 from Applicant  
  
Determination:               20 April 2011

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] Ms Dew’s substantive employment relationship problem was the subject of a determination dated 14 January 2011. In that determination her claim (a disadvantage grievance relating to allegations of bullying) was dismissed.

[2] Without waiting to find out what the outcome of the substantive investigation would be, the respondent had included a “*statement for reimbursement of Costs from the Applicant*” in its written submissions on the substantive matter and had argued:

*“We respectfully recommend to the Authority that they dismiss Maria Rew’s claim and that the Authority accept the following respondent’s statement for costs ....*

[3] Once the substantive determination was available Mr Flaws responded with a submission setting out Ms Rew’s views on costs. He indicated that Ms Rew had been

unwell for some time and was receiving counselling and medical care. He said that although she was working:

*“at a level her health allows...her income frequently falls short of her outgoings and she relies on the charity of family and friends to sustain herself.”*

[4] A payslip was attached to demonstrate that Ms Rew’s net income was just a little over \$300.00 per week.

[5] Relying on the fact that the Authority had a discretion in respect to costs he suggested that this was a case where in equity and good conscience the Authority should decline to award costs. Alternatively, should the Authority decide to award costs, it should do so at a level commensurate with the applicant’s ability to pay.

### **Determination**

[6] The respondent’s statement set out the costs as follows:

|  |                     |
|--|---------------------|
| Loss of income   | \$2,812.50 GST incl |
| Advocate’s costs for preparation of briefs and making closing submissions on the respondent’s behalf | \$4,050.00 GST incl |
| Witness expenses   | \$168.75 GST incl   |
| Mileage 140 km @ 70 cents/kilometre  | \$98.00             |
| Disbursements, postage   | \$30.00             |
| Cumulative total   | \$7,159.25          |

[7] The investigation meeting in respect of this matter was completed within a day. The issues were relatively confined and extensive preparation was not required. I am satisfied that the respondent, as the successful party, should receive a contribution to its costs in line with awards in other similar matters before the Authority. I accept however that the applicant’s limited ability to pay an award of costs is a relevant matter which must be taken into consideration. Balancing these factors I conclude that \$1,500.00 is a reasonable contribution to costs.

**[8] The applicant, Ms Rew, is therefore ordered to pay to the respondent company, Fare Café Limited, the sum of \$1,500.00 as contribution to its costs.**

Yvonne Oldfield

Member of the Employment Relations Authority