

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA300A/08  
5086695

BETWEEN                      GERHARDA REITZEMA  
   Applicant  
  
AND                              ELP PAYROLL HOLDINGS  
   LIMITED  
   Respondent

Member of Authority:      Robin Arthur  
  
Representatives:              Applicant in person  
   Jenni-Maree Trotman for Respondent  
  
Determination:                28 October 2008

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] By determination AA 300/08 (21 August 2008) the Authority dismissed Gerharda Reitzema's personal grievance application.

[2] ELP Payroll Holdings Limited seeks its actual costs said to total \$15,669.84, including GST and disbursements. It says such an award is warranted because Mrs Reitzema had refused an earlier 'without prejudice' settlement offer and – as found in the determination – her dismissal resulted from deliberately misleading the directors to whom she was responsible as a manager.

[3] Costs may be set according to a notional daily rate applied flexibly to the particular circumstances of the case and after considering any factors in requiring an adjustment up or down: *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808.

[4] For a one-day investigation meeting involving preparation of witness statements and attendance by ELP's two directors, I take \$2500 as the notional daily

rate. There are two factors I consider warrant an upward adjustment of that amount:

- i. Following mediation in October 2007 ELP made a written offer to settle Mrs Reitzema's claim for \$1000 on a "without prejudice save as to costs" basis. She did not accept it. That rendered her liable for some or all of ELP's subsequent costs if she was not successful in her claim of unjustified dismissal.
- ii. The Authority's investigation meeting would have been shorter, and ELP would have been put to less cost in preparing for it, if Mrs Reitzema had not initially misled ELP's directors about two matters for which they eventually dismissed her.

[5] However I am not persuaded Mrs Reitzema should be liable for the full level of costs claimed by ELP, of which \$12,281 is said to have been incurred after it sent the 'without prejudice' settlement offer. This is for three reasons.

[6] Firstly, it would well above the usual modest level of costs awarded in the Authority and I have not been provided with sufficient information to properly assess whether all the costs said to have been incurred were reasonable.

[7] Secondly, the Authority investigation meeting was also lengthened by dealing with ELP's evidence on a third reason for Mrs Reitzema's dismissal, to do with alleged excessive internet use in breach of company policy. As noted in the determination, it appeared to be a 'make weight' issue.

[8] Thirdly, Mrs Reitzema appeared to be a person of relatively limited means for whom a full award of costs would be unduly burdensome.

[9] In all the circumstances, Mrs Reitzema is to pay \$3500 to ELP as a reasonable contribution to its costs in this matter.

Robin Arthur  
Member of the Employment Relations Authority