

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Ashleigh Robinson (Applicant)
AND Kirsty Gill t/a Gills Cleaning Services (Respondent)
REPRESENTATIVES Garth O'Brien for Applicant
No appearance for Respondent
MEMBER OF AUTHORITY Vicki Campbell
SUBMISSION RECEIVED 27 September 2006
DATE OF DETERMINATION 26 October 2006

DETERMINATION OF THE AUTHORITY ON COSTS

[1] In my determination dated 14 August 2006 I found that Ms Robinson was entitled to receive \$287.00 gross for arrears of wages and outstanding holiday pay. I reserved the question of costs. I am in receipt of an application for costs from Mr O'Brien on behalf of the applicant.

[2] There is nothing in this case to derogate from the principle that costs follow the event and that the successful applicant should receive a contribution to her reasonably incurred costs.

[3] The following principles are appropriate where the Authority is exercising its discretion in relation to costs (*PBO Ltd (formerly Rush Security Ltd) v Da Cruz*, unreported, AC28/06, 12 May 2006, Colgan CJ, Travis and Shaw JJ):

- There is a discretion as to whether costs should be awarded and what amount;
- The discretion is to be exercised in accordance with principle;
- The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority;
- Equity and good conscience is to be considered on a case by case basis;
- Costs are not to be used as a punishment or as an expression of disapproval of an unsuccessful party's conduct although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award;
- It is open to the Authority to consider whether all or any of the parties costs were unnecessary or unreasonable;
- That costs generally follow the event;
- That without prejudice offers can be taken into account;
- That awards will be modest;
- That frequently costs are judged against a notional daily rate;

- The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[4] It was said in *Harwood v Next Homes Limited*, unreported, AC70/03, 19 December 2003, Travis J, and *Graham v Airways Corporation of New Zealand Ltd*, unreported, AA39/04, 28 January 2004, Member Dumbleton, that average awards of costs fall between \$1,000 and \$1,500 for a one-day investigation meeting by the Authority. There was also agreement in those decisions of a recent trend towards a higher figure of between \$2,000 and \$3,000.

[5] The hearing took less than ½ a day and was not a complex matter. I have considered Mr O'Brien's submissions made on Ms Robinsons behalf and I am satisfied that the discretion under clause 15 of Schedule 2 of the Act ought to be exercised in favour of Ms Robinson. Kirsty Gill t/a Gills Cleaning Services is required to pay to Ms Robinson the sum of \$250.00 plus disbursements of \$130.00 as a reasonable contribution to costs given the subject of the investigation and the duration of the investigation meeting.

[6] An order is made accordingly.

Vicki Campbell
Member of Employment Relations Authority