

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Neera Seelam (Applicant)
AND Westgate Medical Centre Ltd (Respondent)
REPRESENTATIVES Helen Thorpe, Advocate for Applicant
Justine Foden, Counsel for Respondent
MEMBER OF AUTHORITY Marija Urlich
INVESTIGATION MEETING 18 November 2004
DATE OF DETERMINATION 2 March 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] In my determination of 20 December 2004, I found the applicant was not successful in her claim of unjustified constructive dismissal. Costs were reserved and I invited the parties to attempt to resolve this issue themselves.

[2] On 10 February 2005 the Authority received a letter from Ms Foden advising the respondent had attempted to resolve the issue of costs with the applicant, had received no reply to its request for costs and now wished the Authority to determine this issue. Attached to Ms Foden's letter was the respondent's memorandum of costs.

[3] The Authority wrote to Ms Thorpe attaching a copy of the respondent's memorandum on costs and requesting a reply by 25 February 2005. Ms Thorpe's costs memorandum was received on 28 February 2005.

[4] In her submissions on costs Ms Foden advises the total costs incurred by the respondent in defending the applicant's claim were \$4843.12 including GST which is substantiated by supporting documentation. This total includes \$1155.00 in costs incurred in attending mediation and pre-mediation, for which an award of costs cannot be made. Ms Foden submits an order for costs should be made in favour of the respondent for the following reasons; the respondent has been put to considerable expense in defending an unsuccessful application, the respondent participated in the process in a full and timely manner, the applicant made allegations at the investigation meeting without prior notice to the Authority or respondent which extended the investigation and required further instructions and submissions from the respondent and the respondent has been put to further expense in pursuing the issue of costs.

[5] Ms Thorpe submits the parties have been unable to resolve the issue of costs, the applicant accepts she was the unsuccessful party and that the respondent is entitled to a contribution to costs incurred. She submits that in setting the award of costs the Authority should take the following into account; the applicant remains unemployed, is under extreme financial hardship due to the ill health

of a child and a recent burglary of her home and relies on a comment in the determination regarding the informality of the respondent's shift swap system. She submits costs should lie where they fall.

[6] I am of the view this is an appropriate case for an award of costs. The case was important to both parties but was not a particularly complex matter. The investigation meeting was concluded in less than a day with written closing submissions subsequently filed. I accept the applicant is under financial pressure. In all the circumstances and taking into account the principles relating to costs as set out in *New Zealand Airline Pilots Association v The Registrar of Unions* [1989] 2 NZILR 550 and *Reid v Fire Services Commission* [1995] 2 ERNZ 38 I am of the view that an appropriate award of costs including disbursements is \$750.00 including disbursements.

[7] I order Neera Seelam to pay to Westgate Medical Centre Ltd the sum of \$750.00 as a contribution to its costs and disbursements.

Marija Urlich
Member of Employment Relations Authority