

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 56
5160909

BETWEEN MALLORY SELLIMAN
Applicant

AND TE RUNANGA O
KIRIKIROA TRUST
Respondent

Member of Authority: Vicki Campbell

Representatives: Rose Alchin for Applicant
Alex Hope for Respondent

Submissions Received: 17 November 2010 from Applicant
25 November 2010 from Respondents

Determination: 11 February 2011

DETERMINATION OF THE AUTHORITY ON COSTS

- A Ms Selliman is entitled to an award for costs.**
- B Te Runanga O Kirikiriroa Trust is ordered to pay to Ms Selliman the sum of \$6,000.**
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[1] In a determination dated 20 October 2010, the Authority held that Ms Selliman had been unjustifiably disadvantaged but lacked jurisdiction to consider the claim of unjustified dismissal due to the grievance being raised outside the 90 day period. Ms Selliman was awarded compensation of \$15,000.

[2] Prior to the investigation meeting the parties attended mediation on three occasions. At the commencement of the investigation meeting, the Authority adjourned proceedings and directed the parties to once again, attempt to resolve all matters between them.

[3] I have read carefully the submissions from the parties with respect to the issue of costs. The principles appropriate to the exercise of the Authority's discretion in relation to costs are set out in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*¹. Costs will generally follow the event and awards will be modest. However, in exercising its discretion to award costs the Authority is required to first consider whether the costs incurred by Ms Selliman were reasonable in all the circumstances.

[4] Ms Selliman's total costs amounted to \$26,773.13. While the Authority has received a copy of the invoice for legal services, there is no breakdown of the actual costs incurred. This makes it difficult to assess the reasonableness of the total costs.

[5] The hearing was conducted over three and a half days. At least half a day was also used for the purpose of a final attempt at mediation. I have concluded based on other similar cases I have determined in the Authority, that the actual costs incurred by Ms Selliman were reasonable and that my discretion to award costs should be exercised in her favour, but only to the extent that Ms Selliman was successful in her claims.

[6] The Respondent has provided to the Authority a copy of a Calderbank offer made to Ms Selliman at 2.35pm on the second to last day of the investigation meeting. The offer was for a payment of \$12,500 without deduction. There was no response to the offer.

[7] Calderbank offers are relevant when considering costs awards. The Chief Judge of the Employment Court has re-emphasised the need for a steely approach to costs where a reasonable settlement proposal has been rejected.²

[8] By the time the Calderbank offer was made the bulk of Ms Selliman's costs had already been incurred and there is no mention as to whether costs are included in the offer. I have taken the Calderbank offer into consideration in coming to my conclusions as to an appropriate award.

¹ [2005] 1 ERNZ 808.

² *Watson v New Zealand Electrical Traders Limited t/a Bray Switchgear*, Auckland Employment Court, Coglán CJ, 24 November 2006, AC 64/06.

[9] Ms Selliman was successful in her claim for unjustified disadvantage. It was this claim that took up the bulk of the hearing time with approximately 1/3rd of the hearing time being dedicated to the unjustified dismissal claim. I have taken that into account in setting the award for costs.

[10] Having regard to the nature of the investigation, and in the principled exercise of my discretion **Te Rununga Kirikiriroa Trust is ordered to pay to Ms Selliman the amount of \$6,000 in costs.**

Vicki Campbell
Member of Employment Relations Authority