

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Alan Stuart Shore (Applicant)
AND Aqua-Cool Limited (Respondent)
REPRESENTATIVES Alan Stuart Shore In person
Jenni-Maree Trotman, Counsel for Respondent
MEMBER OF AUTHORITY Dzintra King
MEMORANDA RECEIVED 2 May and 29 August from Respondent
No memorandum from Applicant
DATE OF DETERMINATION 23 September 2005

COSTS DETERMINATION OF THE AUTHORITY

The applicant filed proceedings for a personal grievance. He failed to appear on the day of the hearing and subsequently filed an application for a rehearing. That application was rejected. The applicant has filed a challenge in the Employment Court. The respondent seeks costs on both the original application, which was dismissed, and on the subsequent rehearing application.

For the personal grievance application the respondent seeks actual costs of \$7,325. Pursuant to Schedule 2, clause 15 the Employment Relations Authority may order the payment of such costs and expenses as it thinks reasonable.

In considering what costs are reasonable when a party has failed to appear, the steps the other party has been required to take in order to prepare for the hearing should be taken into account. The respondent had to prepare briefs of evidence and also prepared a set of written submissions. The respondent paid a previous employee the costs she incurred in taking time out from her consultancy position to attend the hearing. The respondent made a settlement offer to the applicant on 25 February 2005, which was for \$5,000.

For the rehearing matter the respondent seeks the recovery of actual costs of \$961.15.

In Reid v NZ Fire Service Commission [1995] 2 ERNZ 38 the Court noted that it should be ascertained what costs were reasonably incurred and what proportion of those costs it is reasonable for the other party to pay. The purpose of a costs award is not to punish or express disapproval but to compensate, generally by way of contribution rather than indemnity, the party that has been put to the expense of successfully bringing or defending a claim. The conduct of the parties before and during the hearing and any conduct unnecessarily adding to the cost incurred is relevant to the exercise of the discretion. Costs should follow the event unless there are special circumstances making it just to depart from that general rule.

Where a party withdraws proceedings at any time costs may be awarded to the other party: NZPSA v DSW 16/6/93, Finnigan J, AEC29/93.

An award of costs for failing to appear on the day of the hearing is appropriate as the respondent has been put to unnecessary trouble and expense. There was no hearing time as the applicant did not appear. An award of costs must therefore be based on what reasonable preparation costs were incurred. I see no grounds for awarding full costs. For the failure to attend the hearing which resulted in the dismissal of the case the applicant is to pay the respondent the sum of \$2,000. In making this decision I have taken into account that the applicant was made a substantial without prejudice offer. For the unsuccessful rehearing application, the applicant is to pay the respondent the sum of \$600.

Dzintra King
Member of Employment Relations Authority