

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Pania Sigley (Initiating party)
AND Hauora Whanui Ltd (Responding party)
REPRESENTATIVES Clayton Luke for applicant
Bryce Quarrie for respondent
MEMBER OF AUTHORITY Janet Scott
INVESTIGATION MEETING 9 &10 November 2004
DATE OF DETERMINATION 8 July 2005

COSTS DETERMINATION OF THE AUTHORITY

The applicant brought a personal grievance claim alleging constructive dismissal. The applicant was successful in that claim.

The applicant submits she has incurred costs in the sum of \$11,805.29 (inclusive of GST and disbursements) and seeks an award of costs of half of that sum (\$5,820.30).

The respondent submits it has incurred significant costs in defending the matter and argues that the way in which the case was conducted for the applicant militated against a settlement between the parties and led to protracted litigation with the calling of witnesses that were unnecessary. It was submitted the application for removal of the matter to the Court was inappropriate and that matters that influenced the Authority's determination were not raised until the hearing itself. It was submitted that in all the circumstances the Authority should make an award of costs in the respondent's favour. The sum of \$5000 was suggested as a suitable award.

Discussion

The power to award costs is contained in the Second Schedule of the Employment Relations Act 2000. The general principles to be applied in cost applications are set out, in case law including *NZALPA v Registrar of Unions* (1989) NZILR,550, *Okeby v Computer Associates (NZ) Limited* [1994] 1 ERNZ 613 and *Reid v New Zealand Fire Service Commission* [1995] 2 ERNZ 38. The criteria to be taken into account include the importance of the case to the parties, the way the case was conducted, the conduct of the parties at the hearing, the amount of time required for effective preparation over and above that which would ordinarily be inferred, whether arguments lacking in substance were advanced or whether unduly legalistic and technical points were taken and the actual costs incurred.

The applicant's case was managed in such a way that unnecessary costs were incurred. The case was framed in an unnecessarily complicated way, unnecessary witnesses were called and the evidence for the applicant was formatted and presented in a confusing and disorganised manner. Nevertheless it was determined that the applicant did have a personal grievance and she has been compensated for that. In all the circumstances an award of costs to the applicant should follow.

Determination

The view of the Court in *Harwood v Next Homes Limited* unreported AC 70/03 informs my determination in this matter. The hearing lasted two days. I direct the respondent to pay to the applicant the sum of \$3000 as a contribution to reasonable costs incurred by her in bringing her claim before the Authority.

Janet Scott
Member of Employment Relations Authority