

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**AA 34A/08
5054500**

BETWEEN PETER JOHN STOTT
 Applicant

AND REDVALE CANINE CENTRE
 LIMITED
 Respondent

Member of Authority: Leon Robinson

Submissions received: 19 February 2008
 27 February 2008

Determination: 29 February 2008

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] By a Determination dated 7 February 2008, I determined that the applicant Mr Peter Stott ("Mr Stott") had been unjustifiably dismissed. I declined to award him remedies by reason that I considered his blameworthy conduct was wholly causative of his personal grievance and it would be contrary to equity and good conscience to award any remedies to him.

[2] Redvale Canine Centre Limited ("Redvale") now asks that Mr Stott be ordered to pay costs. Mr Tremewan advises that Redvale's actual costs exclusive of GST are \$8,370.00 together with disbursements of \$116.00. Redvale seeks a contribution of two thirds of its actual costs and submits such an award is reasonable and justified.

[3] Mr Cowan informs the Authority of an offer made by Mr Stott to settle the matter of costs but I take it from the fact of this present application that the offer was not accepted. Counsel also advises Mr Stott is impecunious which I am inclined to accept.

[4] The investigation meeting proceeded over one day. Counsel made submissions to the Authority at the conclusion of the Investigation Meeting. The Determination was issued two days later.

[5] Clause 15 of Schedule 2 of the *Employment Relations Act 2000* is as follows:-

15. *Power to award costs –*

(1) *The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.*

(2) *The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.*

[6] This is equity and good conscience jurisdiction and costs awards in the Authority are generally modest consistent with the Authority's approach to its investigations as described in *Wilson and Grey Power Publishing Co Ltd*¹. Literature published by the Department of Labour report that in the majority of cases, costs for one day investigation meetings fall between \$1,000.00 and \$2,500.00.

[7] The exercise of my discretion calls for a determination of what is a fair and reasonable contribution as between the parties. The Authority adopts a principled approach taking into account relevant matters and having no regard for irrelevant ones.

[8] The general rule is that costs follow the event. The successful party is entitled conventionally to a contribution to its costs. It is necessary to correctly determine which party was the successful one. This is because while Mr Stott was determined by the Authority to have been unjustifiably dismissed, he was not awarded any remedies by way of resolution.

[9] I do not agree that simply because Mr Stott did not succeed in obtaining remedies that he is to be regarded as unsuccessful and consequently Redvale regarded as successful and therefore entitled to a contribution to its costs.

¹ unreported, AA58/03, 4 March 2003, A Dumbleton

[10] The purpose of litigation is not financial enrichment. The Courts and institutions and even this one, dispense "justice" and "remedy" though in this institution I prefer "resolution". Those things are never about enrichment. It is the function of such institutions to clarify and determine legal rights and obligations. It is the declaration of rights which is primarily the function of fountains of justice. I regard it undoubted that a finding that a dismissal was unjustifiable is a declaration of considerable worth to an aggrieved party. Such a declaration and the impact of it can never be underestimated. I wholly endorse what the Employment Court has said on the point:-

[11] ... A declaration that an employer has acted unjustifiably will often play a significant part in resolving an employment relationship problem and be of considerable value to an employee independent of any remedies which may flow from it. That is because the employment relationship is usually more than a purely commercial arrangement. Emotions and feelings are frequently involved, including pride. A declaration that an employee has been unjustifiably dismissed, even when qualified by a finding of substantial contribution, can of itself assuage some of the feelings of humiliation, loss of dignity, and injury to the feelings of the employee arising out of a dismissal. In this way, the declaration itself can address the same feelings of hurt and distress for which compensation may be ordered pursuant to s123(1)(c) of the Employment Relations Act 2000².

[11] The Court very helpfully stated the essential principle thus:-

[13] As a matter of principle, the fact that an employee succeeds in his claim to this extent must be taken into account when fixing costs. In each case, the weight given to it will be a matter of discretion to be exercised in light of the facts of the case but it is not a factor which can be ignored or given no weight³.

[12] I apply that principle in this present instance. Mr Stott succeeded in the primary determination obtaining a declaration that his right not to be unjustifiably dismissed had been infringed. As a matter of equity and good conscience he was not deemed worthy of remedy. That translates to this, Mr Stott succeeded in his personal grievance and Redvale succeeded in resisting his claim for remedy. That being so, both parties succeeded in equal part. There are judgments where this situation has led to orders that each party bear their own costs. I consider the approach appropriate in this instance.

² *Davis -v- Harbour Inn Fisheries Ltd*, unreported, CC9/07, 15 May 2007, Couch J, para 11

³ The same *Davis* judgment above at para 13.

[13] Accordingly, exercising my discretion on a principled basis and for the reasons outlined above, **I order that neither party shall have costs against the other.**

Leon Robinson
Member of Employment Relations Authority