

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 114A/07
5050438

BETWEEN RAYLENE TAYLOR
 Applicant

AND AFU FINANCE LIMITED
 Respondent

Member of Authority: James Crichton

Representatives: Karina Coulston, Counsel for Applicant
 Murray Withers, Counsel for Respondent

Submissions received: 7 November 2007 from Applicant
 20 November 2007 from Respondent

Determination: 18 December 2007

COSTS DETERMINATION OF THE AUTHORITY

The application for costs

[1] By determination dated 19 September 2007, the Authority resolved the employment relationship problem between these parties by determining that Ms Taylor had a personal grievance by reason of an unjustified dismissal.

[2] Costs were reserved.

[3] Counsel for the applicant Ms Taylor then filed a memorandum dated 2 October 2007 seeking to know whether the Authority wanted submissions on costs.

[4] The Authority issued a memorandum dated 11 October 2007 indicating that no such memorandum need be filed unless and until the parties had themselves sought to resolve the costs matter between them.

[5] Then, by memorandum dated 7 November 2007, counsel for Ms Taylor requested, inter alia, that the Authority make a determination in respect of costs and made brief submissions in that regard.

[6] The Authority then requested like submissions from counsel for AFU Finance Limited and these came to hand on 20 November 2007.

[7] Then by memorandum also of 20 November 2007, counsel for Ms Taylor sought to file further submissions in respect of costs and by letter dated 21 November 2007, counsel for AFU Finance objected to those further submissions, alleging that they were not mandated by the process originally set out by the Authority.

[8] Counsel for AFU Finance is correct; the process set out by the Authority in its memorandum of 11 October 2007 contemplated submissions by the successful party (Ms Taylor) first with a response from the unsuccessful party (AFU Finance Limited) second.

The claim for costs

[9] In her initial submissions, Ms Taylor identifies her costs in this matter at \$4,330. She notes that she is a person of limited means with a child to support and accordingly a significant contribution to costs should be made.

[10] AFU Finance, through counsel, suggests that the matter was an unusual one in all the circumstances, limited to its own facts and that in consequence the Authority ought to let the costs lie where they fall or at worst make a modest award of \$800-1,000.

[11] Counsel for AFU Finance also refers to the Full Court decision in *PBO Ltd v. Da Cruz* ACA2A/05 which sets out in detail the principles that ought to apply in the awarding of costs by the Authority.

Discussion

[12] I do not accept the submission made on behalf of AFU Finance that this was somehow a unique matter or that the award made by the Authority was *at the top end of the scale*. This was a claim properly made by an applicant who understood she was employed and who was able to satisfy the Authority that the evidence supported that view, notwithstanding the objection of AFU Finance Limited. It was not, in the

Authority's view, a unique or special case. It was a matter decided on the evidence provided to the Authority by the parties, as all such matters are.

[13] It follows that the usual principle that the costs should follow the event ought not to be departed from in the particular circumstances of this case.

[14] The Authority also considers that this is a suitable case to be dealt with by the *tariff-based approach* which the Authority frequently uses in dealing with matters of costs and which was specifically referred to with approval in the *Da Cruz* case referred to earlier in this determination.

[15] Given the increase over time in the daily rate awards made for one day investigation meetings, it seems now reasonable to assert that an average award for a one day investigation meeting would be around \$2,500 or perhaps a little more.

[16] In the particular circumstances of this case, the matter was dealt with in effectively not much more than half a day and on that footing an award of costs in the sum of \$1,350 would seem appropriate.

Determination

[17] AFU Finance Limited is to pay to Ms Taylor the sum of \$1,350 as a contribution to her costs.

James Crichton
Member of the Employment Relations Authority