

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 363
5431166

BETWEEN ROBYN THOMAS
 Applicant

A N D ADVANCE
 INTERNATIONAL
 CLEANING SYSTEMS (NZ)
 LIMITED
 Respondent

Member of Authority: James Crichton

Representatives: Sacha Beacham, Advocate for the Applicant
 Neel Kamal, Advocate for the Respondent

Submissions Received: 23 July 2014 from the Applicant
 9 July 2014 from the Respondent

Date of Determination: 1 September 2014

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] The Authority's substantive determination issued on 30 June 2014 and rejected Ms Thomas' claim that she had been unjustifiably dismissed or unjustifiably disadvantaged by actions of her employer, Advance.

[2] Costs were reserved but in the context of observations from me that, because Advance had acted for itself in the investigation meeting, I assumed there would be no issue as to costs.

The application for costs

[3] Contrary to the assumption I have just referred to, Advance seeks a modest contribution to its costs and indicates to the Authority that it did in fact obtain legal

advice in defending Ms Thomas' claim and it estimates those costs at \$3,500 plus GST.

[4] Notwithstanding that, and in recognition of its former relationship with Ms Thomas, it proposes a discounted figure of \$1,500 with \$500 of that figure being paid immediately and the balance paid by automatic direct credit on a weekly basis until the total amount is extinguished.

The response

[5] Submissions for Ms Thomas proceed on the footing that as there is no evidence before the Authority that Advance did in fact obtain legal assistance, save for its bare assertion, there is no entitlement to costs.

[6] Amongst other things, Ms Thomas asserts that many of the points made in the brief submission by Advance they have derived from their discussions with her advocate in respect of fixing costs by agreement.

Determination

[7] I think this is a matter where the interests of justice are best served by having costs lie where they fall. Neither of the parties' submissions assisted the Authority greatly. In the substantive determination, I indicated my conviction that Advance had not obtained legal advice or assistance in defending Ms Thomas' claim. In its submissions seeking an award of costs, Advance simply asserted that it did seek advice for which it paid, but there is no evidence about that. In the normal course of events, a claim to have incurred costs would be supported by invoices to that effect, particularly in circumstances where the Authority has opined that there was no legal advice sought.

[8] Ms Thomas' submissions on the other hand concentrate exclusively on that issue and fail absolutely to tell me anything about her financial circumstances which may or may not be relevant to whether a costs award could be sustained or not.

[9] In fact, the only observation about Ms Thomas' financial circumstances comes from the submission of Advance and indicates that the reason that Advance is proposing to discount its claim for costs is because of its "*prior knowledge of Robyn's [Ms Thomas] general financial position*".

[10] Accordingly, even if Advance has in fact sought legal advice for which it has paid and could have quantified that with its filed submissions, I am satisfied that if the successful party is concerned about Ms Thomas' financial position, so ought the Authority to be and on that footing I decline to make any costs order against Ms Thomas and in favour of Advance.

James Crichton
Member of the Employment Relations Authority