



[5] The Authority also observed that in assessing costs on the investigation which followed Mr Watson's dismissal, it could be considered relevant that although he had succeeded on the issue of liability for unjustifiable dismissal, the monetary remedies he had been awarded were relatively slight.

[6] The 14 day time limit for any costs application was not complied with and it became necessary for Mr Watson's counsel, Mr Harrison, to apply for an extension of time. That application has been opposed by Mr Langton counsel for Progressive.

[7] I do not accept the explanations given for the failure to apply within the 14 days. There can be no excuse for counsel failing to read or understand the plain words written in a determination of the Authority, which is required to set its own procedure in relation to addressing an issue of costs.

[8] The 14 days period was set so that costs remained unsettled the matter would come back quickly to the Authority and be dealt with while the circumstances of this unusual case were still reasonably fresh in memory, allowing a determination to be made efficiently.

[9] Ordinarily I probably would not grant an extension, but this has been no ordinary case. The extension is granted and the late application for costs is allowed.

[10] Comprehensive submissions have been made on behalf of the parties in support of and opposition to the application.

[11] The applicant's total costs amounted to \$21,712.97 (including GST and disbursements). The respondent's costs are not disclosed given the way it has approached the application. It seeks a reasonable contribution to costs on the interim reinstatement application in which Progressive was wholly successful, at the daily tariff of up to \$3,000 per day for the one day hearing.

[12] Standing back and looking at the various applications that were made to the Authority, before and after Mr Watson's dismissal, and looking at their disposal, it seems to me that a critical point was reached when Mr Watson applied to the Authority for a compliance order but before that could be investigated and determined, Progressive went ahead and dismissed him. Had Progressive halted the disciplinary action it was then taking and awaited the determination of the compliance application, it would have lost little or nothing but would, in all likelihood, have

gained the opportunity to ultimately succeed in obtaining a declaration from the Authority that Mr Watson's dismissal was fully justified. The Authority found that there had been serious misconduct on the part of Mr Watson, such as would usually justify dismissal, assuming the employer also acted in a way that was fair and reasonable procedurally.

[13] The Authority found that the action of Progressive in denying Mr Watson the opportunity to have his disciplinary action dealt with fairly and reasonably was, in itself, unfair and unreasonable and had therefore tainted the dismissal and made it unjustified.

[14] On my view of the entire matter I consider that Progressive should be entitled to a contribution of costs in relation to the application for interim reinstatement. That particular application had little or no chance of success in the situation where Mr Watson had freely resigned and was working out a few weeks' notice before taking up new employment he had found before leaving Progressive. He was not an applicant for permanent reinstatement and there were no compelling features about the nature of his employment likely to have led to him being reinstated even for a brief period only.

[15] I consider that Progressive should reimburse Mr Watson for the expense he incurred in making application for the compliance order, which remedy was taken out of his reach by the action of the employer carrying on to dismiss him instead of waiting for the application to be determined one way or another.

[16] The Authority's discretion under clause 15 of Schedule 2 of the Employment Relations Act expressly extends to "expenses," and I consider that Progressive's action that left the compliance application high and dry was a waste of expense for Mr Watson.

[17] As to the investigation carried out into the claim of unjustifiable dismissal and in respect of other remedies sought, Mr Watson obtained such value as he may choose to place on a declaration that he had been unjustifiably dismissed, but in purely financial terms he received very little by way of compensation and reimbursement. I consider there is merit in Mr Langton's submission that costs should lie where they fall in that situation.

[18] For the interim reinstatement application, I fix costs at \$2,500 on a contribution basis, which amount Mr Watson is ordered to pay to Progressive.

[19] For the compliance application, I award as expenses the invoiced amount of \$3,096.75. Progressive is therefore ordered to pay that amount to Mr Watson.

[20] A claim has been split out in relation to the s 4(1A) part of Mr Watson's claims. In my view, he is entitled to a reasonable contribution of \$4,000 to costs or expenses.

[21] In relation to the unjustified dismissal claim and its ultimate resolution, the Authority orders that costs lie where they fall.

A Dumbleton  
**Member of the Employment Relations Authority**