

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**[2014] NZERA 38  
5397831**

BETWEEN SARAH WHITE  
Applicant

AND CAFÉ NIKAU LIMITED  
Respondent

Member of Authority: Eleanor Robinson

Representatives: Stan Austin, Advocate for Applicant  
Murray Hutchins & Craig Dempster for Respondent

Submissions received: 16 January 2014 from Applicant  
25 December 2013 from Respondent

Determination: 3 February 2014

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] By determination [2013] NZERA Auckland 547 the Authority found that the Applicant, Ms Sarah White, had not been unjustifiably dismissed by the Respondent, Café Nikau Limited.

[2] In that determination costs were reserved in the hope that the parties would be able to settle this issue between them. Unfortunately they have been unable to do so, and the Respondent has filed submissions in respect of costs.

[3] This matter involved approximately half a day of an Investigation Meeting, with written submissions being submitted subsequent to that. Mr Hutchins and Mr Dempster on behalf of Café Nikau Limited are claiming costs of \$3,721.74.

[4] The expenses claimed by Mr Hutchins and Mr Dempster include legal expenses of \$800.00 incurred prior to the Investigation Meeting and associated with preparation of the case for the Respondent, secretarial duties of \$972.00, and travel and other out of pocket expenses associated with the costs of attending the Investigation Meeting of \$1,949.70.

[5] Mr Austin for Ms White submits that whilst the Authority has discretion to award costs that are reasonably incurred, these should be properly proven to have occurred.

*(i) Legal costs claim*

[6] Mr Austin, noting that the Respondent was not represented by legal counsel or other appropriately qualified people at the Investigation Meeting, submits that the legal costs referred to by Mr Hutchins and Mr Dempster are for legal advice and do not constitute representation at the Investigation Meeting. As such they should be disregarded.

*(ii) Secretarial Duties*

[7] Mr Austin further submits that in regards to the secretarial duties claim, the oral evidence of Mr Hutchins at the Investigation Meeting was that Mr Dempster had typed the Respondent's evidence.

*(ii) Costs of attendance at Investigation Meeting*

[8] Mr Austin submits that the costs of attending the Investigation Meeting on 5 November 2013 of \$1,949.70 should be excluded on the basis of no representation by legal counsel or other appropriately qualified people, in addition to no proof of the expenses incurred.

[9] In summary, it is Mr Austin's submission that no costs should be awarded on the basis that no claimable costs have been identified.

*Principles*

[10] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 which states:

***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.*

[11] Costs are at the discretion of the Authority, as observed by the current Chief Judge Colgan in *NZ Automobile Association Inc v McKay*<sup>1</sup>. As identified by the Court of Appeal in

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<sup>1</sup> [1996] 2 ERNZ 622

*Victoria University of Wellington v Alton-Lee*<sup>2</sup> at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.

[12] The principles and the approach adopted by the Authority on which an award of costs are made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>3</sup>.

### **Determination**

[13] The normal rule is that costs follow the event, however in some cases it is appropriate to let costs fall where they lie.

[14] Whilst the Authority may in its discretion award legal costs in respect of legal advice obtained in respect of a matter before the Authority and any associated secretarial duties provided by a third party, Mr Hutchins and Mr Dempster have failed to supply any documentation to substantiate the legal and secretarial costs they are claiming.

[15] The costs of the Applicant and Respondent attending an Investigation Meeting are expected to be funded by the parties themselves. An exception to this is costs associated with the attendance of legal representation at an investigation meeting, provided these costs have been actually and reasonably incurred and are supported by invoices.

[16] Mr Hutchins and Mr Murray have failed to provide any supporting invoices or documentation in respect of the expenses claimed and I therefore order that costs are to lie where they fall.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**

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<sup>2</sup> [2001] ERNZ 305

<sup>3</sup> [2005] 1 ERNZ 808