

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 82A/10  
5162426

BETWEEN

ELAINE WHITE  
Applicant

A N D

NOAHS HOTEL (NZ)  
LIMITED t/a RYDGES  
CHRISTCHURCH  
Respondent

Member of Authority: Philip Cheyne

Representatives: Tim Oldfield, Counsel for Applicant  
Quenton Donald, Advocate for Respondent

Submissions Received: 16 April 2010 from Applicant  
28 April 2010 from Respondent

Determination: 29 April 2010

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 31 March 2010 I upheld the applicant's view about the scope of work that she could be required to perform by her employer, but adjourned her claim for a compliance order and declined her claim for remedies for a personal grievance and a penalty. Costs were reserved.

[2] I have now received memoranda from both parties. This determination resolves the disputed question of costs.

[3] Mrs White was represented by in-house counsel for her Union. There is no claim for time involved but there is a claim for airfares, accommodation and meals, taxi fares and the lodgement fee.

[4] In approaching an assessment of costs following an investigation meeting, the Authority is guided by *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808. In that case the Employment Court referred to a number of principles which are relevant here.

[5] First, while there is discretion as to whether costs should be awarded and the amount, the discretion is to be exercised in accordance with principle and not arbitrarily. Costs generally follow the event, but are not to be used as a punishment or an expression of disapproval of the unsuccessful party's conduct. The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[6] Here, while Mrs White succeeded in establishing that her employer could not, under the terms of their employment relationship, require her to continuously do housekeeping work, she received none of the remedies that she claimed. One might say that she won the war but not the battle. In essence, the problem was a dispute about the interpretation, application or operation of the employment agreement. Often enough the Authority has declined to award costs in disputes proceedings, but as counsel points out such cases normally involve collective employment agreements affecting more than one person. Nonetheless, I consider that the same approach should apply in this case. These parties were unable to resolve between themselves a disagreement about the effect of their employment agreement and Mrs White, with her Union's assistance, approached the Authority for resolution. The result is to the benefit of both parties as it clarifies their responsibilities to one another.

[7] I consider that the objects of the Employment Relations Act 2000, such as supporting successful employment relationships and good faith obligations, are best met in the present case by leaving costs to lie where they fall.

Philip Cheyne  
Member of the Employment Relations Authority