

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Alastair Bruce Clifford (Applicant)
AND Fentondale Enterprises Limited t/as Grand Tiara Hotel Rotorua
(Respondent)
REPRESENTATIVES Alastair Bruce Clifford In person
Claudia Elliott, Counsel for Respondent
MEMBER OF AUTHORITY R A Monaghan
MEMORANDUM RECEIVED 11 March 2005
DATE OF DETERMINATION 3 May 2005

DETERMINATION OF THE AUTHORITY ON COSTS

[1] In a determination of the substantive matters between the parties, dated 6 December 2004, I found Mr Clifford had a personal grievance on the ground of unjustified dismissal but his contributory conduct was such that no remedy was awarded. I also found he had a personal grievance on the ground of unjustifiable disadvantage, and awarded a remedy.

[2] Mr Clifford has sought costs. In the six weeks since Mr Clifford made his application I have not heard from the respondent. Nor have I received a response in the three weeks since the senior support officer enquired about whether a response would be provided.

[3] In support of his application for costs Mr Clifford filed a breakdown of the expenses he incurred, and sought full reimbursement of those in the sum of \$4,543.97. By my addition, the sum of the figures Mr Clifford provided is \$4,343.97. Of those expenses, \$1,221.25 amounted to costs for professional legal services, \$1,417.34 were travel and other expenses incurred in attending mediation, and \$1,705.38 were attributed to the investigation meeting (including travel and accommodation) or general disbursements. Mr Clifford's travel and accommodation expenses were incurred because he had moved to Queenstown, but the mediation and investigation meetings were conducted in Rotorua.

[4] In general in litigation the successful party is entitled to a contribution to the costs the party has incurred. It is rare for the full reimbursement of costs to be awarded, and there is no reason to make such an award here.

[5] Regarding any contribution to costs, Mr Clifford was only partly successful. I found in his favour as set out at the beginning of this determination, but dismissed all of his remaining claims. In that respect, the employer was also partly successful.

[6] Further to the detail of the application:

- (a) Legal representation. Mr Clifford represented himself in the Authority's investigation. I accept he sought legal assistance, but he is entitled to recognition of that matter in costs only to the extent that the advice was concerned with his application to the Authority and the conduct of the investigation. A significant proportion of it addressed the parties' relationship prior to dismissal and before any grievance had been raised at all, although I would accept that Mr Clifford obtained some assistance in respect of the investigation.
- (b) Mediation. The Authority's practice is not to award costs of mediation.
- (c) Lost wages to attend the investigation meeting. In the absence of special reason to the contrary, parties representing themselves cannot recover the cost of wages lost in attending an investigation meeting. No such reason was provided here.

[7] Thus, what remains claimable is a proportion of the costs of professional legal services, airfares between Queenstown and Rotorua to attend the investigation meeting, two nights' accommodation, the Authority's hearing fee (\$150) and filing fee (\$70), and disbursements. Further to the air travel from and to Queenstown, the return flight departed from Auckland 10 days after the investigation meeting. That was not explained, and I do not take the cost of that fare into account. I therefore assess the total claimable amount as \$1,140.

[8] Bearing in mind that Mr Clifford was only partly successful, Fentondale is ordered to pay to Mr Clifford one half of the claimable amount, being \$570.

R A Monaghan
Member, Employment Relations Authority