

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN John Buchanan Dewar (Applicant)

AND The Order of St John Midland Regional Trust Board (First Respondent)

REPRESENTATIVES Mr Dewar in person
Peter Churchman for respondent

MEMBER OF AUTHORITY Y S Oldfield

SUBMISSIONS 11 May, 30 May, 10 June 2005

DATE OF DETERMINATION 5 July 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

- [1] In a determination dated 14 April 2005 I concluded that Mr Dewar had not established that he had a personal grievance in relation to his employment with the respondent. The respondent now seeks costs in relation to the investigation of the employment relationship problem.
- [2] Mr Dewar's problem involved four separate claims of personal grievance, consolidated into one investigation. Mr Churchman has argued that the four claims were of some detail and complexity, required extensive disclosure of documents and raised a number of novel propositions. He says that because of the way the Applicant raised and pursued his grievances the respondent incurred costs of \$35,000.00 and disbursements of \$1,332.55.
- [3] He says that the case was well outside the norm in respect of legal expenses and submits that an order of costs for two-thirds of the costs incurred by the respondent is appropriate. On that basis he claims costs of \$23,500.00 and disbursements of \$1,332.55.
- [4] For his part, Mr Dewar says in submissions that he took all reasonable and practicable steps to resolve his employment problem by way of an internal process before proceeding to the Authority. He says he presented his case expeditiously and as a consequence the investigation meeting took only a day and a half. He says that the respondent elected to engage a 'Rolls Royce' standard of legal representation. Finally he asks that in fixing costs the Authority takes into consideration his ability to pay, noting that he has young children and has already incurred considerable debts in relation to legal costs associated with Commission of Inquiry and criminal proceedings in which he is involved. He says that costs should be allowed to lie where they fall or at most a modest contribution is warranted.
- [5] In reply, Mr Churchmen noted that a Wellington firm was engaged in this case because Mr Dewar had already (in relation to the Commission of Inquiry) instructed the Hamilton firm

normally used by the respondents. He submits that the matter was a serious one and required appropriate senior counsel and asserts that far from inflating costs, the involvement of senior counsel helped contain costs. He notes that Mr Dewar continues to receive his salary of approximately \$100,000.00 per annum. Finally he notes that Mr Dewar is a senior Human Resources manager himself and was in a position to know that if he was unsuccessful in advancing technical and unmeritorious grievances he faced the possibility of significant liability for costs.

Determination

- [6] I accept that the respondent is entitled to a meaningful award of costs and further accept that the detailed claims made by Mr Dewar required a thorough and considered response. However I consider an award of \$23,000 to be extreme for an investigation of this scope.
- [7] In setting costs I favour the approach used in *Graham v Airways Corporation of New Zealand Ltd* AA 39/04; AEA 223/03 28 January 2004.
- [8] I apply it to this case as follows. Mr Churchman did not provide me with an indication of his hourly rate but a conservative estimate of the rate of a practitioner at his level of seniority is \$400.00. The investigation took ten hours in all. I accept that in this case a two-for-one ratio of preparation to investigation time can be justified. That gives a total of 30 hours of professional time at \$400.00, or \$12,000.00.
- [9] I accept that Mr Dewar does not face any particular personal hardship and that he was in a position to make an informed choice about proceeding with his claims. I am satisfied that two thirds of the above figure is an appropriate level of costs in all the circumstances of this case.
- [10] I order Mr Dewar to pay to the respondent the sum of \$8,000.00 plus disbursements of \$1,332.55.**

Y S Oldfield
Member of Employment Relations Authority