

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Peter Joseph Cacciopoli (Applicant)

**AND** Board of Trustees of Edmund Hillary School (First Respondent)

**AND** The Attorney General in respect of the Chief Executive of the  
Ministry of Education (Second Respondent)

**REPRESENTATIVES** Mr Cacciopoli in person  
Chris Patterson for First Respondent  
Peter Gunn for Second Respondent

**MEMBER OF AUTHORITY** Y S Oldfield

**SUBMISSIONS** 24 January, 18 February, 24 March 2005

**DATE OF DETERMINATION** 29 March 2005

**DETERMINATION OF THE AUTHORITY**

In a determination dated 7 December 2004 I concluded that the applicant had not been employed by the first respondent in his capacity as its Chairperson. That determination was arrived at “on the papers.” Those papers comprised an agreed summary of facts and submissions from all parties. The second respondent had been joined at my initiative but by consent in order to be heard on matters in which the Ministry had an interest.

Both respondents now seek costs and none of the parties has been able to agree the issue. I now determine both costs applications on the basis of written submissions.

**First Respondent’s costs application**

Mr Patterson told me on behalf of the Board that its actual costs were \$3,685.50 arising out of the need to prepare file and serve memoranda and submissions and to attend telephone conferences. He submits that these costs are reasonable in all the circumstances of a novel claim and seeks a contribution to those costs of 60% being \$2,211.30.

Mr Cacciopoli says that although the Employment Relations Authority has been found to be the wrong forum for the determination of this matter, he remains of the view that the Board’s conduct caused the personal grievance application and says that an award of costs to the Board in this case would merely serve to “reinforce the arrogant belief of some Board members that they can do as they like.” He also says that the Board’s costs have been met by its insurer.

The entitlement to a contribution to costs is not forfeit as a result of insurance cover. A cost is nonetheless associated with defending the matter. The Board is entitled to a reasonable contribution to costs reasonably incurred.

The level of costs incurred by the Board was somewhat higher than I would have thought reasonable. The written memoranda and submissions were not extensive, although they did serve their purpose very adequately. Counsel was not required to appear and there was no dispute as to the material facts. The purpose of this approach was to keep costs to a minimum.

In these circumstances I consider an award of \$1,000.00 to be more than sufficient as a contribution to the Board's costs.

**Mr Cacciopoli is ordered to pay to the Board of Trustees of Edmund Hillary School the sum of \$1,000.00 as contribution to costs.**

### **Second Respondent's costs application**

Mr Gunn advised that the second respondent has incurred over \$8,000.00 in costs and disbursements. He says these costs were reasonably incurred since Mr Cacciopoli's claim was a novel one with broad implications and raised important issues for the Ministry. Mr Gunn says that a contribution of two thirds is accepted as a reasonable starting point in relation to costs. However he said that the Ministry had instructed that:

*"while it wishes to recover more than nominal costs, it does not seek to enforce its full legal entitlement in this case. Accordingly, the respondent seeks the amount of \$1,000.00 inclusive of disbursements by way of costs."*

Mr Cacciopoli objects to making a contribution to the second respondent's costs because he did not support the joinder. However, the Ministry was a crucial player in this matter and it was in my view essential that it be joined. It is entitled to costs in the same way as any other respondent party put to expense.

However, I am surprised that the second respondent has incurred over \$8,000.00 in costs, significantly higher again than the first respondent. Again this seems excessive given that there was no dispute about the crucial facts, the legal issues were narrow and no appearance was required from Counsel.

However, all that becomes immaterial since the second respondent seeks only \$1,000.00 as its contribution to costs. That is in my view a very reasonable level of contribution.

**On that basis I order Mr Cacciopoli to pay the sum of \$1,000.00 as a contribution to the second respondent's costs.**

Y S Oldfield  
Member of Employment Relations Authority