

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Kevin Hayward (Applicant)  
**AND** Flat Bush Supermarket (New Zealand) Limited (Respondent)  
**REPRESENTATIVES** John O'Shea, Counsel for Applicant  
Zaheda Ali, Counsel for Respondent  
**MEMBER OF AUTHORITY** Leon Robinson  
**SUBMISSIONS RECEIVED** 27 June 2005  
28 June 2005  
**DATE OF DETERMINATION** 30 June 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

**The Application for Costs**

[1] By a Determination dated 1 June 2005<sup>1</sup>, the Authority resolved the employment relationship problem between these parties by determining that the applicant Mr Kevin Hayward ("Mr Hayward") had been unjustifiably dismissed. The Authority made orders that the respondent Flat Bush Supermarket (New Zealand Limited) ("the Supermarket") pay to Mr Hayward the gross sum of \$12,790.44 as reimbursement and \$3,000.00 as compensation.

[2] The parties were invited to resolve costs between them but they were unable to agree. The representatives have lodged memoranda to assist me in the exercise of the Authority's discretion.

**Costs in the Authority**

[3] It was said in *Harwood -v- Next Homes Limited*<sup>2</sup> and *Graham and Airways Corporation of New Zealand Ltd*<sup>3</sup> that average awards of costs fall between \$1,000.00 and \$1,500.00 for a one-day investigation meeting by the Authority. There was agreement too in those decisions of a trend towards a higher figure of between \$2,000.00 and \$3,000.00. It has also been held that generally, awards of costs in the Authority are modest consistent with the Authority's approach to Investigations. That approach is as described in *Wilson and Grey Power Publishing Co Ltd*<sup>4</sup>.

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<sup>1</sup> AA185A/05

<sup>2</sup> unreported, AC70/03, 19 December 2003, Travis J

<sup>3</sup> unreported, AA39/04, 28 January 2004, Alastair Dumbleton

<sup>4</sup> unreported, AA58/03, 4 March 2003, Alastair Dumbleton. See also the Authority's Determinations in *Beardsley and Campac International Limited* AA39A/01, Yvonne Oldfield and *Henry and Youth Horizons Trust* AA107A/02, Ken Anderson.

[4] The principles and rules conventionally applied to applications for costs in traditional adversarial or trial litigation do not fit with the Investigative role of the Authority and the objects of the legislation which establishes it<sup>5</sup>. Those principles and rules continue to remain relevant however and the overall question is to determine what is a fair and reasonable contribution as between the parties. The Authority adopts a principled approach taking into account relevant matters and taking no account of irrelevant ones.

### The claims for costs

[5] Mr O'Shea advises Mr Hayward's actual costs are \$4,359.38 (including GST). It is the GST exclusive portion which is relevant for present purposes in the sum of \$3,875.00. Mr Hayward seeks a contribution to his actual costs in the sum of \$3,750.00 plus GST. I decline to consider costs incurred in mediation. I also consider that an award of \$3,750.00 would approach an indemnity and that would not be justified in this case.

[6] Ms Ali advises the Supermarket will not challenge the Authority's determination and asks that the Authority consider the issues of costs more leniently in light of that concession.

[7] I consider what costs are reasonably incurred. The Authority's Investigation Meeting proceeded over one day. An earlier Meeting was postponed at the Supermarket's request. Applying a multiplier of 2 to Meeting time of 8 hours yields total professional time involved of 12 hours and at Counsel's hourly rate of \$250.00 per hour, results in notional reasonable costs of \$4,000.00.

[8] I now fix liability by determining that the Supermarket shall contribute to Mr Hayward's costs which I have notionally fixed as reasonable at \$4,000.00. The Supermarket shall contribute to that sum in the amount of \$2,000.00. Exercising my discretion on a principled basis, **Flat Bush Supermarket (New Zealand) Limited is ordered to pay to Kevin Hayward the sum of \$2,000.00 as a contribution to costs.**

Leon Robinson  
**Member of Employment Relations Authority**

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<sup>5</sup> *Harwood and Koia -v- Attorney-General*, unreported, AC8/04, 23 February 2004, Colgan J.