

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Karen Felton (Applicant)  
**AND** UBD (a division of W & H Publications Ltd) (Respondent)  
**REPRESENTATIVES** Eska Hartdegen for applicant  
Rebecca McBeath, for Respondent  
**MEMBER OF AUTHORITY** Y S Oldfield  
**SUBMISSIONS** 16 March 2005, 31 March 2005  
**DATE OF DETERMINATION** 4 April 2005

**DETERMINATION OF THE AUTHORITY AS TO COSTS**

In a written determination dated 17 November 2004 I concluded that Ms Felton was genuinely redundant and awarded her compensation for hurt and humiliation resulting from deficiencies in the process by which her employment was terminated. The parties have been unable to agree the issue of costs and I now determine this on the basis of written submissions they have provided to me.

This matter was investigated in meetings spanning two and a half days. Approximately half a day of this was however spent in an adjournment during which the parties discussed the possibility of settlement. The applicant, Ms Felton, had been assisted by Counsel (Ms Hartdegen) in preparing for the meeting. Ms Hartdegen also came in to the Authority to assist with the settlement discussions. For the investigation meeting itself however Ms Felton attended with support from her husband only.

In submissions Ms Hartdegen tells me that the applicant's actual costs, incurred in preparation for the investigation meeting, were \$13,196.25 inclusive of GST. The applicant considers that 80% of this figure would be a reasonable contribution to costs under the circumstances.

Ms McBeath submits that this is a case where costs should lie where they fall or in the alternative, be at the lower end of the scale. The reasons she gives for this are that:

- Ms Felton was only partially successful indeed only one of her original five claims succeeded;
- she was not represented during the investigation meeting; and
- the respondent was put to additional and unnecessary expense by the withdrawal if the claim for reinstatement the day before the meeting and of claims of disadvantage and for a bonus on the morning of the meeting.

Ms McBeath also submits that the level of costs claimed by the applicant is excessive in the circumstances since the case was not unusually complex and the applicant's costs relate to preparation only.

## Determination

The costs incurred by the applicant in this case were manifestly excessive especially given the fact that Ms Felton represented herself at the investigation meeting. Although it is true that the levels of costs reported to the Authority do vary widely the costs here fall well outside the range normally seen. The matter was not complex and the scope of the material supplied to the Authority in advance of the investigation meeting was narrow. I received one witness statement for Ms Felton (her own) and limited documentary evidence. The actual costs were not, therefore, reasonable. I proceed to estimate what a reasonable level of costs would have been by the accustomed method as follows.

Given the level of complexity I consider the typical multiplier of 1.5 to be appropriate. Since there was no hearing time for Counsel, preparation costs may therefore be estimated on the basis of 50% of the time spent in the investigation meeting (two days after excluding the adjournment for settlement discussions, but reasonably full days totalling 16 hours.) Ms Hartdegen did not advise her hourly rate. I therefore take as a guide the hourly rate recently quoted to me in costs submissions from another experienced sole practitioner. This was \$270.00.

On this basis, reasonable costs can be estimated at  $\$270.00 \times 16 \times 0.5$  that is \$2,160.00. The starting point for a reasonable contribution to costs is usually two thirds. In this case, as Ms McBeath has pointed out, a number of the claims made by the applicant were withdrawn after the respondent had been put to considerable additional expense. In these circumstances especially I see no reason to depart from the usual two thirds level of contribution. Two thirds of \$2,160.00 amounts to \$1,440.00.

**On that basis I order the respondent W & H Publications Ltd to pay to Ms Felton the sum of \$1,440.00 as a contribution to her costs.**

Y S Oldfield  
Member of Employment Relations Authority