Determination Number: AA 95A/06
File Number: AEA 737/05

Under the Employment Relations Act 2000

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE

BETWEEN	Ranburn Rest Home Limited t/a Ranburn Home & Hospital (Applicant)
AND	Tiphany Senora (Respondent)
REPRESENTATIVES	J Turrall, Counsel for Applicant N Bush, Counsel for Respondent
MEMBER OF AUTHORITY	R A Monaghan
MEMORANDA RECEIVED	24 and 26 April 2006
DATE OF DETERMINATION	17 May 2006

DETERMINATION OF THE AUTHORITY ON COSTS

[1] Two determinations have been issued in respect of this employment relationship problem. In the first I declined Ranburn's request for interim relief. With one exception, in the second I declined its claim for damages. There was also a counterclaim, which did not result in any order. Costs were reserved and the parties have submitted memoranda on the matter.

[2] Counsel for Ranburn said the claim for damages was successful because of the award of $5,600 in the applicant's favour. He said that represented a significant portion of the total claim for $17,962.46. Accordingly he sought an award of costs in the sum of $4,500.

[3] Counsel for Ms Senora said Ms Senora was successful in a significant majority of the issues, and should receive an award of costs.

[4] I do not consider it was accurate to invoke the award of $5,600 in saying Ranburn was the successful party. At the centre of the employment relationship problem were Ranburn's applications first to oblige Ms Senora to continue to work for it for the balance of what it said was an agreed three year period - as dealt with in its application for interim relief - and, failing that, for damages well in excess of $5,600. Both applications rested on the strongly-urged position that there was an agreed minimum period of employment of three years, despite the lack of any mention of such a period in the parties' written employment agreement. That position took up most of the investigation. Ranburn was not successful in obtaining interim relief, and nor was it successful in persuading me there was an agreed minimum period of employment.

[5] While I ordered Ms Senora to pay to Ranburn the sum of $5,600, there had never been a dispute that the money was owed and addressing the issue required only a minimal expenditure of time. Moreover, as I said in the substantive determination, it was 'a stretch' to say the obligation to pay arose out of the parties' employment relationship. The frequently-expressed acknowledgement that the debt was owed leads me to consider it likely it would have been paid during the attempts to

resolve the problem had it been clear the obligation arose out of the employment relationship. Instead, Ms Senora's obligation was contained in an agreement between her and her recruiter. Ranburn apparently made relevant payments pursuant to an agreement or arrangement between it and the same recruiter, then sought to recover the payment from Ms Senora.

[6] For these reasons I consider Ms Senora was the successful party in respect of Ranburn's applications.

[7] Regarding the counterclaim for penalties against Ranburn, I found there were certain breaches of the Employment Relations Act 2000, but that no penalties were warranted. I regard the outcome as neutral when balancing the parties' levels of success on the counterclaim, and note that the counterclaim required a relatively small expenditure of time.

[8] I conclude that, overall, Ms Senora was the successful party and is entitled to an award of costs in her favour.

[9] Ms Senora was represented by her union, which employs counsel in-house. Counsel has advised that Ms Senora was not charged a fee for that representation, hence the union has borne those costs. Although the union was not itself a party to the problem, it is accepted in the employment law jurisdiction that costs can be awarded in such circumstances.[1]

[10] The investigation meeting took about a half day. An award inside the range of awards usually made when there has been a meeting of that length would be $1,000 - $1,500. I would accept that the preparation time required for the meeting was relatively high, particularly as the interim application was dealt with on the papers and there was no separate meeting in respect of it. At the same time counsel nominated such a modest hourly rate that applying the standard multiplier, and adjusting for extra preparation time, yields a total within that range.

[11] For the reasons indicated I do not consider that Ranburn's success in obtaining an award of $5,600 warrants an adjustment in the costs that would otherwise have been awarded.

[12] Ranburn is therefore ordered to contribute to Ms Senora's costs in the sum of $1,500.

R A Monaghan
Member, Employment Relations Authority

[1] **Unkovich v Air New Zealand Limited** [1995] 1 ERNZ 336