

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Gerry Kostic (Applicant)

**AND** Graham Dodd and Grant Milligan (partnership) trading as Allan Milligan Cars and/or Motoworld Systems Limited trading as Allan Milligan Cars (Respondent)

**REPRESENTATIVES** Timothy J Twomey, Counsel for Applicant  
Michael A Kyne, Counsel for Respondent

**MEMBER OF AUTHORITY** Helen Doyle

**SUBMISSIONS RECEIVED** 28 February 2006  
22 March 2006

**DATE OF DETERMINATION** 7 April 2006

**COSTS DETERMINATION OF THE AUTHORITY**

[1] In my determination dated 30 January 2006 I found that the applicant was unjustifiably dismissed but that his contribution to the personal grievance was such that it disentitled him to any remedy except a contribution toward his costs. I reserved the issue of costs. The parties were unable to reach agreement with respect to costs.

[2] I then received submissions from Mr Twomey on behalf of the applicant and Mr Kyne on behalf of the respondent.

[3] The applicant incurred actual costs in excess of \$6500.00 (GST exclusive).

[4] Mr Twomey in his submission for an order as to costs refers to the well established principles when deciding costs in employment cases and Mr Kyne accepts in his submission they are the appropriate principles.

[5] Mr Kyne submits that the finding of the Authority as to contribution should be reflected in terms of any cost award made to the applicant and that a finding of costs in the lower range of recent costs decisions would be justified. Mr Kyne submits that any award should be limited to a maximum of \$1,000.00.

[6] Mr Twomey submits that a reduction of costs by reason of contributory conduct would be unfair and be tantamount to a double penalty.

[7] Both Mr Twomey and Mr Kyne say that the case was a very important one to their respective clients.

[8] The full Court of the Employment Court considered the issue of costs in a challenge against a costs determination from the Employment Relations Authority in *PBO Limited (formerly Rush Security Limited) v Da Cruz* (Unreported) 9 December 2005 AC2A/05.

[9] The full Court set out in its judgment principles appropriate to the Authority and consistent with its functions and powers.

[10] It is clear that the Authority has discretion as to whether costs are awarded and, if they are, the amount awarded. That discretion is to be exercised in accordance with principle and not arbitrarily. Costs are not to be used as a punishment or to express disapproval of the unsuccessful party's conduct although if that conduct has unnecessarily increased costs then that can be taken into account in making an award. Costs generally follow the event and without prejudice offers can be taken into account. Awards in the Authority are usually modest and frequently costs are judged against a notional daily rate.

### ***Determination***

[11] This was an important case to both parties.

[12] This investigation meeting took place over the duration of one full day and a second day of just under two hours. Although not legally complex there was disagreement between the parties on nearly every aspect of a pivotal exchange and whether the applicant resigned or was dismissed.

[13] Both parties contributed to the meeting in a helpful way and there was no conduct that unnecessarily increased the time to investigate the matter.

[14] The applicant's actual costs were not unreasonable in those circumstances and it is necessary to consider what would be a fair contribution toward the costs actually incurred.

[15] I am of the view that a suitable starting point for an award of costs where the investigation took just short of a day and a half would be \$3000.00. This sum takes into account the type of preparation required for a case of this nature. I now need to consider whether there is an adjustment required to that amount.

[16] I accept Mr Twomey's submission that if the finding of 100% contribution was reflected in any cost award it would be a double penalty and that would not be consistent in my view with the purpose of costs which is to compensate a party put to the expense of taking a case. This was a case where there was a dispute whether the applicant resigned or was dismissed. The finding was that the applicant was unjustifiably dismissed. I do not consider an adjustment should be made to any award for costs for the reason that the applicant's contribution to the personal grievance was such to disentitle him to any remedy.

[17] I am of the view that a fair and reasonable contribution toward the applicant's costs is \$3000.00.

[18] I order Graham Dodd and Grant Milligan (partnership) trading as Allan Milligan Cars and/or Motoworld Systems Limited trading as Allan Milligan Cars to pay to Gerry Kostic the sum of \$3000.00 for costs.

Helen Doyle  
Member of Employment Relations Authority