

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Vanessa Jane Claxton (Applicant)
AND Gillian Kerr t/a Quick Print Typing Services (Respondent)
REPRESENTATIVES William Thomas Nabney, Counsel for Applicant
Gillian Kerr for Respondent
MEMBER OF AUTHORITY Vicki Campbell
SUBMISSIONS RECEIVED 21 October 2005 from Respondent
21 January 2006 from Applicant
DATE OF DETERMINATION 13 March 2006

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 22 September 2005 I found that Ms Claxton did not have a personal grievance. I determined that as the respondent was unrepresented I would be making no order for costs. It has since come to my attention that the respondent was legally represented in all but the investigation meeting. Submissions have been sought and received on the issue of costs which I will now determine.

[2] The purpose of an award of costs is to compensate to a reasonable degree a party who has been put to expense by being required to assert or defend a right. It is conventional that costs are to follow the event. The respondent was the successful party. It is entitled to an award of costs.

[3] The Employment Court has held that the following principles are appropriate where the Authority is exercising its discretion in relation to costs:

- There is a discretion as to whether costs should be awarded and what amount;
- The discretion is to be exercised in accordance with principle and not arbitrarily;
- The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority;
- Equity and good conscience is to be considered on a case by case basis;

- Costs are not to be used as a punishment or as an expression of disapproval of an unsuccessful party's conduct although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award;
- It is open to the Authority to consider whether all or any of the parties costs were unnecessary or unreasonable;
- That costs generally follow the event;
- That without prejudice offers can be taken into account;
- That awards will be modest;
- That frequently costs are judged against a notional daily rate;
- The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[4] It was said in *Harwod v Next Homes Limited*, unreported AC70/03, 19 December 2003, Travis J, and *Graham v Airways Corporation of New Zealand Ltd*, unreported, AA39/04, 28 January 2004, Member Dumbleton, that average awards of costs fall between \$1,000 and \$1,500 for a one-day investigation meeting by the Authority. There was agreement too in those decisions of a recent trend towards a higher figure of between \$2,000 and \$3,000.

[5] The respondent seeks an award of \$2,366.25 (including \$60.00 disbursements) being the full costs incurred. Invoices have been provided to support the submission that the costs stated were actually incurred.

[6] Ms Claxton was legally aided and therefore her liability as to costs if governed by the Legal Services Act 2000. The liability is restricted to the contribution the aided person was required to make. I am advised Ms Claxton's contribution to her legal aid was \$50.00.

[7] I am bound to conclude that pursuant to s.40(2) of the Legal Services Act I am not able to order Ms Claxton to pay an award of costs that exceeds the \$50.00 contribution that she has made to the Legal Services Agency.

[8] Accordingly, Ms Claxton is ordered to pay \$50.00 as a contribution to the respondents legal costs.

Vicki Campbell
Member of Employment Relations Authority