

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Ruth Hawea (Applicant)

AND The Attorney General in respect of The Chief Executive Officer of the
Child Youth & Family Services of Wellington (Respondent)

REPRESENTATIVES Rodney J. Hooker, Advocate for Applicant
Joanna Holden, Counsel for Respondent

MEMBER OF AUTHORITY Dzintra King

INVESTIGATION MEETING 18 July 2006

DATE OF DETERMINATION 27 April 2007

COST DETERMINATION OF THE AUTHORITY

The respondent was successful in its claim that the applicant's grievance had filed outside the 90 day limit and now seeks costs.

The principles applicable to an award of costs in the Authority have been set out in PBO Ltd (formerly Rush Security Ltd) v Da Cruz [2005] 1 ERNZ 808. The Full Court set out a number of principles including:

- There is discretion as to whether costs are awarded and the amount of the award.
- The discretion is not to be exercised arbitrarily.
- Costs are not to be used punitively.
- The Authority can consider whether all or any of the parties' costs were unnecessary or unreasonable.
- Costs generally follow the event.
- Awards will be modest.
- Frequently costs are judged against a daily notional rate.
- The nature of the case can influence costs.

The respondent says that the applicant claimed six matters had been raised as personal grievances. Each matter involved different people within the Department and required separate consideration and responses. The respondent briefed five witnesses. While the Investigation lasted only an hour a greater amount of time was actually involved in terms of briefing witnesses and making submissions.

The respondent's actual costs are \$5,000. Disbursements include \$584.11 for airfares and \$156.73 accommodation costs for counsel, \$79.15 in taxi fares and \$11.88 toll calls and photocopying.

The respondent seeks a contribution of \$2,000. Ms Holden accepted that travel for outside counsel was generally acknowledged to be a matter for the instructing party to absorb. However, given the prior correspondence from the respondent's counsel the respondent sought the airfares and taxi costs but was prepared to waive the accommodation charge.

The applicant says that given the respondent's witnesses were based in Auckland Crown Law could have instructed Crown solicitors based in Auckland so does not accept the airfares, accommodation and taxi costs.

The applicant submitted that \$500 would constitute reasonable costs.

Ms Clark asked that the Authority not make a costs determination until the substantive issue had been determined – the respondent accepted that Ms Hawea had filed a personal grievance in time.

I had delayed making a determination but the applicant has not progressed her personal grievance claim so in fairness to the respondent a costs decision should be made.

Awards in the Authority are generally in the vicinity of \$1000 to \$3000 per day. Costs of \$5,000 for a short hearing are high. I do, however, accept that the length of a hearing is not necessarily an accurate indicator of the amount of time and effort expended in preparation for the hearing. The applicant is to make a contribution of \$1,000 to the respondent's costs.

As to disbursements, given that the applicant was put on notice that travel disbursements would be claimed and that the respondent has waived the accommodation cost the applicant should pay for the airfares, the taxi fares and the toll calls and photocopying. The disbursements total \$675.14.

Dzintra King
Member of Employment Relations Authority