

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

Determination: AA 129A/07

File Number: 5048859

BETWEEN

Deborah Stewart
Applicant

AND

Century 21 Huntly, Morrinsville
& Papakura Limited
Respondent

Member of Authority: Vicki Campbell

Representatives: Pru Dawson for Applicant
Kate Ashcroft for Respondent

Submissions received: 28 May 2007 from Applicant
5 June 2007 from Respondent

Determination: 13 June 2007

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 30 April 2007 I found that Ms Stewart had been unjustifiably dismissed from her position as Rental Manager for the respondent's Huntly office.

[2] In my determination I reserved the question of costs and invited the parties to resolve the matter between them. They have been unable to do so and I am now in receipt of memorandum from both parties.

[3] I have considered the submissions made by the parties and I am satisfied that the discretion under clause 15 of Schedule 2 of the Act ought to be exercised in favour of Ms Stewart.

[4] The following principles are appropriate where the Authority is exercising its discretion in relation to costs (*PBO Ltd (formerly Rush Security Ltd) v Da Cruz*, [2005] 1 ERNZ 808):

- There is a discretion as to whether costs should be awarded and what amount;
- The discretion is to be exercised in accordance with principle;
- 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.

[5] The applicant has incurred costs of \$6,148.25 for a hearing which lasted one day. She seeks a contribution to those costs. The matter was not complex and the costs incurred are reasonable given the preparation required and the length of the hearing.

[6] There is nothing in this case to derogate from the principle that costs follow the event and that the successful applicant should receive a contribution to reasonably incurred costs.

[7] Century 21 Huntly, Morrinsville & Papakura Limited is required to pay to Ms Stewart the sum of \$2,000 as a reasonable contribution to costs.

[8] An order is made accordingly.

Vicki Campbell

Member of the Employment Relations Authority