

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Amy Jilaine McKay (Applicant)

AND Woodend Preschool & Nursery Limited trading as Minnies Preschool
(Respondent)

REPRESENTATIVES David Beck, Counsel for Applicant
Kelvin Reid, Counsel for Respondent

MEMBER OF AUTHORITY Paul Montgomery

SUBMISSIONS RECEIVED 22 December 2006
23 January 2007

DATE OF DETERMINATION 30 January 2007

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination issued on 30 November 2006 I declined the applicant's grievance claim and reserved costs inviting the parties to attempt to resolve this issue between themselves. They have been unable to do so.

[2] The respondent says that its actual costs in relation to preparation for the investigation meeting, drafting of statements of evidence, drafting submissions for the hearing and the submissions in response to the applicant's following the hearing and attendance were \$6,200.00 (excluding GST). On behalf of the respondent, counsel seeks a reasonable contribution to these costs in the amount of \$4,650.00, being two thirds of the actual costs incurred. Counsel submits that the costs sought do not include costs in relation to the preparation of the costs memorandum.

[3] Further, the respondent also seeks witness costs for Kaylene Richards and Heather Sullivan pursuant to s.2, clause 6 of the Employment Relations Act 2000. The respondent seeks costs in the amount of \$50 per witness as provided for under the Regulations.

[4] On behalf of the applicant Mr Beck submits that the costs as sought by the respondent are not reasonable for a one day hearing opining that the case lacked legal complexity and was largely a fact based inquiry. Further Mr Beck submits that the applicant's claim was neither frivolous nor vexatious in that she genuinely believed she had not clearly communicated her resignation which had not been put in writing.

[5] Counsel also points out that the respondent represented herself at mediation stage and engaged counsel only for the hearing before the Authority.

[6] Counsel also submits that the current financial situation of Ms McKay is difficult as she works 30 hours per week. Counsel helpfully attached a statement of his client's monthly income and

outgoings. Finally, counsel submitted that it was appropriate to allow costs where they fall in all the circumstances of this case.

[7] The investigation meeting commenced at 10am and concluded at 3.20pm with a lunch adjournment of 45 minutes. The matter was handled in an effective and timely manner by those involved and as an uncomplicated grievance claim appears to me very much a matter suitable for an assessment costs on a tariff basis. I refer the parties to *PBO Ltd v. Da Gruz* [2005] 1 ERNZ 808.

[8] I have also been mindful of the information provided by the Department of Labour survey of costs awards (1 January 2006 – 30 June 2006) which indicates that most cost awards for successful employers in meetings lasting less than one day are below \$2,000 with awards of \$1,000 - \$1,499 being most common. Those awards cover the range of work done by the Authority, not all of which involves as much preparation as personal grievance claims.

[9] I have no difficulty in accepting that Ms McKay has provided me with accurate information about her difficult financial situation. However, I am also mindful of the need to consider some recompense to the respondent for the costs it has incurred.

[10] Standing back and looking at the circumstances of this particular matter I think it just to award the respondent costs of \$1,250.00 as a contribution to its reasonably incurred costs.

[11] I order Ms McKay to pay the respondent this sum.

[12] In respect of the claim for witness expenses, I order Ms McKay to pay the respondent, to the use of Ms Richards and Ms Sullivan, the sum of \$20.00 each. That is a total of \$40.00.

Paul Montgomery
Member of Employment Relations Authority