

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 165A/07
5051592

BETWEEN KAYCIE FRANCE
 Applicant

AND ROBIN COSMOS t/a
 SABOTAGE
 Respondent

Member of Authority: Marija Urlich

Representatives: Kerry Single, for Applicant
 Hamish Russ, for Respondent

Submissions received: 3 July 2007 from Applicant
 19 July 2007 from Respondent

Determination: 23 July 2007

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 6 June 2007 (AA 165/07) I found that Mrs France had been unjustifiably dismissed from her position at Mrs Cosmos' Sabotage fashion retail stores. Costs were reserved, the parties were invited to attempt to resolve this issue themselves and a timetable set in the event such discussions were unsuccessful. The parties have filed costs memoranda.

[2] By way of submissions Mr Single has provided a copy of a letter and attachments sent to Mr Russ seeking to settle the issue of costs and Mr Russ' reply. This documentation shows the actual costs incurred by Mrs France in pursuing her personal grievance total \$8,408.75 (including GST and disbursements of \$127.65). These costs include those related to mediation.

[3] In his letter to Mr Russ, Mr Single says that because the suspension and dismissal were found to be unjustified, Mrs Cosmos should reimburse Mrs France all costs incurred. I understand that this is the claim Mrs France wishes the Authority to consider.

[4] In reply Mr Russ makes the following points in his costs memorandum:

- (i) the investigation meeting was a simple one, taking four hours;
- (ii) the hearing time should be multiplied between 1.5 and 2 to assess a reasonable level of professional involvement;
- (iii) generally mediation costs are not awarded by the Authority;
- (iv) it is accepted that ordinarily costs follow the event;
- (v) disbursements of \$127.65 are reasonable; and
- (vi) a reasonable contribution to costs would take into account the narrow issues for determination and fall well below \$2,100.

[5] It is usual that costs follow the event. Mrs France was the successful party; she is entitled to a contribution to costs reasonably incurred. Grounds do not exist for full indemnity costs or for mediation costs to be included. Taking into account the principles articulated in *Da Cruz*¹, and the particular circumstances of this employment relationship problem including that the matter was not complex and the investigation completed in less than a day, with written closing submissions filed at a later date, I set the award of costs at \$2000 plus disbursements of \$127.65.

[5] This sum represents less than a third of Mrs France's actual costs. The award is made having considered those actual costs against an assessment of a reasonable level of costs given the nature of the claim, the time involved and the conduct of the parties. There is nothing about this matter which would justify an award outside the usual range of awards made by the Authority for matters of this kind.

[6] Robin Cosmos t/a Sabotage is ordered to pay Kaycie France \$2000, plus \$127.65 in disbursements, as a contribution to her legal costs and I so order.

Marija Urlich

Member of the Employment Relations Authority

¹ *PBI Ltd v Da Cruz* [2005] 1 ERNZ 808