

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 74C/08  
5099026

BETWEEN

GLENAAR HUNTLEY  
Applicant

AND

MAATAA WAKA KI TE TAU  
IHU TRUST  
Respondent

Member of Authority: Helen Doyle

Representatives: Kay Stringleman, Advocate for Applicant  
Brian Fletcher, Counsel for Respondent

Submissions received: 29 September 2008 from Applicant  
10 October 2008 from Respondent

Determination: 3 December 2008

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In my determination dated 30 June 2008 I found that the applicant had a personal grievance that she had been unjustifiably dismissed from her employment with the respondent and awarded her remedies for lost wages and compensation for humiliation and loss of dignity. I did not make an award for the loss of paid parental leave or an order for the applicant's reinstatement to the position she had held with the respondent.

[2] Submissions as to costs were received from Ms Stringleman and Mr Fletcher. Ms Stringleman submits that the costs for Ms Huntley amount to \$7,486.25 which sum includes disbursements of \$455 and GST. The disbursements include Ms Stringleman's travel from Christchurch to Blenheim by vehicle and return and accommodation costs.

[3] Both Ms Stringleman and Mr Fletcher refer in their respective submissions to *PBO Limited v. Da Cruz* [2005] 1ERNZ 808 and the principles in that case held to be appropriate to the Authority and consistent with its functions and powers. *PBO Limited* is the leading Employment Court judgment on costs and I have applied the principles in determining costs in this matter.

### **Determination**

[4] The investigation meeting took just short of two days. The parties conduct during the investigation meeting did not increase costs but this was a case that was very important to both parties. It had been recognised in recent Employment Court judgments that the notional daily tariff frequently applied by the Authority in determining costs can be greater than \$2,000. In the unreported Employment Court judgment of *The Chief Executive of the Department of Corrections v Tawhiwhirangi* (WC 4A/08) the Court was required to consider costs both in the Employment Relations Authority and the Employment Court. Judge Shaw said, referring to the passage of time since 2006 when a judgment of the Court had noted that the Authority's tariff ranged up to about \$3000 per day, that that figure is most likely to be an appropriate starting point for the Authority's tariff rather than an upper figure. There is also an unreported costs judgment of the Full Court in *South Tranz Ltd v. Strait Freight Ltd* (CC3/08) where it was held that \$2000 per day is a reasonable starting point considering the award of costs in the Authority is generally modest. There was an allowance in that case to the defendant of \$3000 costs for an investigation meeting that took a day and a half to be off set against an award for costs and disbursements in the Court. *Tawhiwhirangi* was also referred to in the judgment of the Chief Judge of the Employment Court in *Sefo v Sealord Shellfish Limited* (unrep CC 4B/08) in terms of the daily tariff now being approved in a range up to \$3000 per day.

[5] It is a well established principle that the party who is not successful pays a contribution toward the costs of the successful party. There is no good reason in this case to depart from that principle.

[6] Every case is different and should be considered in terms of its own circumstances when arriving at a notional daily tariff. Costs in the Authority are generally modest. In this matter I consider it appropriate to apply a notional daily rate of \$2,500 given that the matter was not altogether straightforward, the evidence

required by the applicant had to cover quite wide ranging matters relied on for the dismissal and full submissions were provided. That said, it was not a matter which properly assessed would have required the preparation in *Tawhiwhirangi*. I have considered Mr Fletcher's submission that reinstatement was not successful and quite a lot of evidence related to that. Balanced against that however is that much of the evidence, although I accept not all, was necessary in any event because it went to justification for the dismissal. I do not make any adjustment in that respect.

[7] Ms Stringleman says that there was an unfounded allegation following the investigation meeting regarding the possible breach by the applicant of the Authority's non-publication order that resulted in an increase in costs in this matter. I accept that there would have been costs in terms of that matter although Mr Fletcher correctly submits that the costs in terms of those allegations would be spread across two other individuals represented by Ms Stringleman who also had grievances against the respondent and were implicated, probably more so, by the respondent in the possible breach. In those circumstances, I make an adjustment of \$200 only in that regard to reflect the additional cost in respect to that matter.

[8] I allow the disbursements for postage and telephone in the sum of \$35 as claimed. The travel and accommodation disbursements have not been broken down. They are expressed as a total sum of \$420. Mr Fletcher submits that accommodation is not allowed as a disbursement in the High Court without special direction of the Judge and should not be allowed without special reason. The Authority, under schedule 2 clause 15 of the Employment Relations Act 2000, may order any party to pay to the other party expenses as the Authority thinks reasonable. Where there is an out of town representative then the question of reasonableness is not only about the reasonableness of the expenses claimed but whether it was reasonable to instruct an out of town representative in terms of those additional expenses. Ms Stringleman was instructed to represent the applicant through the applicant's union. A local representative would have avoided travel costs and accommodation but the claims in terms of these for Ms Stringleman are modest. Considering the matter broadly having Ms Stringleman as a representative could not be said to have been so unreasonable so as to deprive the applicant of any contribution toward those expenses. There was some travel required from Christchurch to Blenheim and return and accommodation but the sum claimed is comparatively modest. Had the travel been by plane instead of

vehicle then it would have been much more expensive. I am of the view that it would fair to allow the claim for the amount of \$300.

[9] I conclude that there should be an award for costs on this matter in favour of the applicant and that a fair and reasonable contribution to Ms Huntley's cost would be the sum of \$5,200 together with disbursements in the sum of \$335.

[10] I order Maataa Waka Ki Te Tau Ihu Trust to pay to a reasonable contribution to Glenaar Huntley's costs in this matter in the sum of \$5,200 together with disbursements in the sum of \$335.

Helen Doyle  
Member of the Employment Relations Authority