

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 103/08
File number 5078695

BETWEEN IAN GRAY
(Applicant)

AND THE CHIEF EXECUTIVE
DEPARTMENT OF
CORRECTIONS
(Respondent)

Member of Authority: P R Stapp

Submissions received: 1 July 2008 from Respondent
14 July 2008 from Applicant

Determination: 31 July 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] I reserved costs in a determination dated 27 August 2007 (WA 120/07). The applicant was unsuccessful in his claims. The respondent has applied for costs in the sum of \$11,992. The claim for costs has been denied by the applicant who says that any costs should lie where they fall

[2] The first principle that applies is that costs usually follow the event. In this case the respondent, having been successful, could reasonably expect some contribution to be made by the applicant towards its costs.

[3] Secondly costs are not to punish any party but are to contribute towards the successful party's reasonably incurred costs if it deserves them. I am satisfied that costs have been reasonably incurred by the respondent to defend the claims made by the applicant. Also, I am satisfied that the sum of the claim applied for by the respondent is much less than what the purported actual costs might be. Although no receipts and invoices have been provided it is sufficient for me to consider that reasonable costs should be based on \$2,000 for a one day investigation meeting. In my assessment a multiplier of 2 for assessing the total hours and preparation would be appropriate.

[4] Thirdly Mr Gray was entitled to proceed with the employment relationship problem in the Authority where he believed that he had important issues and a valid and plausible case to be answered. However, that right comes with the risk of costs in the event of not being successful. He was unsuccessful on the claims he made, including a claim for compensation. He put himself at the risk of incurring costs when he withdrew his application for reinstatement on the eve of the Authority's investigation meeting. This is because the respondent had reasonably prepared to defend the applicant's claim for reinstatement. Also, despite my comments that the change management was messy and that it was understandable that Mr Gray had concerns about how he was being treated, these matters were minor findings. If they are significant outcomes for Mr Gray, he has to accept that such findings come at a cost, when he could have reasonably attempted to have them acknowledged, without incurring the costs of an investigation. Indeed the offer by the respondent to pay him a contribution towards costs would have gone some way to help resolve the problem and he should have prudently considered that offer to settle.

[5] In all respects this was a standard type of employment relationship problem.

Reasonable costs and a contribution

[6] The costs follow the event. I have assessed reasonable costs on the basis of \$2,000 for a one day investigation meeting where there were attendances by representatives, and multiplied that sum by 2 for the total hours including preparation. The investigation involved preparation including the production of documents, written statements from witnesses and replies, and submissions subsequently provided in writing. It is my assessment that the applicant should contribute approximately 75% of \$4,000, and meet the cost of half the disbursements claimed by the respondent.

[7] Mr Gray is to pay the Department of Corrections the sum of \$3,000 contribution towards its costs and \$660 disbursements.

P R Stapp
Member of the Employment Relations Authority