

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 32/08  
5084441

BETWEEN

JOHN COFFEY  
Applicant

AND

THE CHRISTCHURCH  
PRESS, A DIVISION OF  
FAIRFAX NEW ZEALAND  
LIMITED  
Respondent

Member of Authority: Helen Doyle

Representatives: Tony Wilton, Counsel for Applicant  
Raewyn Gibson, Advocate for Respondent

Submissions received: 26 March 2008 from Applicant  
25 March 2008 from Respondent

Determination: 1 April 2008

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In my determination dated 6 December 2007 I found that the applicant did not have a personal grievance that he had been unjustifiably dismissed. I reserved the issue of costs.

[2] The parties attempted to reach agreement on the matter of costs. The applicant has challenged the Authority's determination to the Employment Court. Mr Wilton suggested to Ms Gibson on behalf of the applicant that the matter of costs be deferred until the challenge had been dealt with by the Court.

[3] The respondent wanted costs with respect to the Authority's investigation meeting to be determined. Submissions were lodged as to costs on behalf of the respondent and received by the Authority on 25 March 2008.

[4] Mr Wilton, on behalf of the applicant, promptly responded to those submissions on 26 March 2008.

[5] The Authority is now in a position to determine costs.

### **Submissions**

#### *Respondent*

[6] The respondent submits that it has been put to significant legal expense by the applicant's claim and says that its costs of \$6,769.57 plus GST are neither unnecessary nor unreasonable because it was required to provide detailed evidence, comprehensive submissions and additional submissions after the investigation meeting finished because of a new issue about notice.

[7] The respondent submits that there are no issues relating to its conduct to militate against an award of costs.

#### *Applicant*

[8] The applicant submits that there is no issue with the quantum of the respondent's costs and the only issue is what would be a reasonable contribution towards them.

[9] The applicant submits that this is a reasonably straight forward personal grievance which was dealt with in one day.

[10] The only matter the applicant submits was unusual was the Authority calling for additional submissions on the question of whether a dismissal on notice as opposed to a summary dismissal involved a lower standard of justification.

[11] The additional submission Mr Wilton submits arose from a submission on behalf of the respondent, which was challenged on behalf of the applicant. In the end Mr Wilton said that the applicant's submission on the point was accepted and the matter does not justify an increase in any contribution to be made by the applicant.

[12] Mr Wilton submits that a contribution of \$2,000 toward costs would be appropriate.

**Determination**

[13] The Authority has a discretion as to whether costs are awarded and, if they are, the amount awarded. That discretion is to be exercised in accordance with principle and not arbitrarily. Costs are not to be used as a punishment or to express disapproval of the unsuccessful party's conduct unless it has unnecessarily increased costs. Costs generally follow the event and awards in the Authority are usually modest.

[14] There is no good reason in this case not to make an award of costs in favour of the respondent. I accept that the respondent's legal costs were reasonably incurred and I need to consider what would represent a fair contribution to the respondent's actual costs.

[15] The case was important to both parties and reinstatement was sought as a remedy. The personal grievance was not factually or legally complex. The investigation meeting took place over the course of one day and neither party's conduct contributed to any increase in the time taken to investigate the matter.

[16] There was one issue that arose about notice at the end of the investigation meeting during the respondent's submissions. Written submissions were subsequently provided to the Authority by both the applicant and respondent about whether a dismissal on notice following warnings, as opposed to a summary dismissal, involved a lower standard of justification.

[17] It was not immediately accepted by Mr Wilton on behalf of the applicant that the applicant had been dismissed on notice and further evidence may have been required on that point. As it was Mr Wilton accepted that the dismissal had been on notice in his submissions and then proceeded to deal with the issue of the standard of justification.

[18] A further difficulty only discovered at the time of submissions on the day of the investigation meeting was that the applicant had not been paid the full amount of notice as required in terms of the employment agreement. Payment of the correct amount to the applicant was made following the investigation meeting.

[19] I find that a suitable starting point for costs on this matter is \$2,300. The events that led to the preparation of written submissions following the investigation

do support some adjustment of the costs upwards. This is because it had not been previously clear to the respondent that there was any dispute that the applicant's dismissal was on notice.

[20] I am of the view that a fair and reasonable award for costs in all the circumstances is \$2,500.

[21] I order John Coffey to pay to The Christchurch Press, a division of Fairfax New Zealand Limited the sum of \$2,500 being costs.

Helen Doyle  
Member of the Employment Relations Authority