

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

**AA229A/09
5143040**

BETWEEN TASITUMUA GEORGE MASINA
Applicant

AND TUKAKI WAITITI as the
Commissioner of Te Kura Kaupapa
Maori o Kokiri o Te Rahuitanga o
Otago
Respondent

Member of Authority: Leon Robinson

Submissions Received: 28 July 2009
 11 August 2009

Determination: 12 August 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] By a Determination dated 14 July 2009, I determined that there would be no formal orders in relation to the employment relationship problem between the parties. The respondent commissioner now makes application for costs.

[2] Through his counsel, the commissioner advises his actual costs including disbursements are approximately \$30,000. The commissioner seeks a contribution of \$20,000 to those costs.

[3] Through his counsel, Mr Masina says he is impecunious. He has been unemployed without any income since December 2008. It is said that he is being financially supported by whānau and has no assets or funds to meet an award of costs against him.

[4] This investigation involved an interim application for reinstatement and a substantive application for unjustifiable dismissal. Both applications involved two days of investigation meetings. The applicant was unsuccessful in obtaining the

Authority's formal orders by way of resolution. The commissioner would ordinarily be entitled to an award of costs.

[5] This is an equity and good conscience jurisdiction and costs awards in the Authority are generally modest consistent with the Authority's approach to its investigations. Each case is to be treated on its own facts. The exercise of my discretion calls for a determination of what is a fair and reasonable contribution as between the parties.

[6] I accept the submission, because there was evidence of it during the substantive investigation meeting, that Mr Masina has no means because he is unemployed. He has a large family of young children. His family are being supported by whānau. I accept therefore that Mr Masina does not have the ability to pay a costs award against him.

[7] Having regard to Mr Masina's inability to meet an award of costs, in this equity and good conscience jurisdiction I exercise my discretion by declining to make an award of costs against Mr Masina. Accordingly, **I order that neither party shall have costs against the other.**

Leon Robinson
Member of Employment Relations Authority