

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

**AA 259A/09
5098439**

BETWEEN BRYNYCE OWEN

Applicant

AND YOU AND ME LTD T/A WEE
WISDOM MONTESSORI

Respondent

Member of Authority: Leon Robinson

Submissions Received: 19 August 2009

Determination: 21 September 2009

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] By a Determination dated 5 August 2009, I determined that there was no case for the Authority's orders as sought by the applicant Mrs Brynyce Owen ("Mrs Owen"). The respondent You & Me Limited t/a Wee Wisdom Montessori ("You & Me") now makes application for an award of costs in its favour in respect of the Authority's complete investigation, including the Authority's preliminary determination permitting Mrs Owen's various claimed personal grievances to proceed to investigation¹.

[2] You & Me's actual costs are advised by counsel as \$39,385.03². I accept that evidence through counsel. It is submitted that such costs were reasonably incurred. A contribution to those costs is sought on a multiplier basis at a daily rate of \$5,000.00 per day in the sum of \$37,500.00 and alternatively on a two thirds basis in a sum not less than \$25,994.20.

¹ As determined by the Authority in AA404/07, 19 December 2007, A Dumbleton.

² I am satisfied that these costs are incurred after mediation held on 17 April 2007.

[3] You & Me is to be regarded as the successful party because it resisted all of Mrs Owen's multiple claims against it. Costs will follow that event, and You & Me is entitled to an award of costs in its favour. The investigation meeting proceeded over two days and with comprehensive written submissions, I permit one further half day.

[4] This is an equity and good conscience jurisdiction. As such, I regard it desirable if not imperative to have regard to the means of the parties. Despite Mrs Owen's claims being determined unmeritorious, an award of costs is not to punish. It is regrettable that Mrs Owen fails to provide any response to the claim for costs against her. Notwithstanding that failure, I am aware of her particular circumstances because of the evidence she and her witnesses gave to the Authority in the substantive investigation. Mrs Owen is not in paid employment and studies full-time. She supports her teenage son who also studies. The evidence was that Mrs Owen's son's contributes financially to the household. I regard that evidence as establishing Mrs Owen has limited means to meet an award of costs against her.

[5] I consider it is appropriate to award costs according to the Authority's daily tariff. I regard that tariff as ranging between \$1,500 to \$3,000 per day. Having regard to Mrs Owen's limited means, I accept the lower limit tariff appropriate for two and on half meeting days. That yields a total sum of \$3,750.

[6] In the principled exercise of my discretion **I order Brynyce Owen to pay to You & Me Limited t/a Wee Wisdom Montessori the sum of \$3,750 as costs.**

Leon Robinson
Member of Employment Relations Authority