

Company's Costs Submissions Summarised

In costs submissions received on 19 February and 19 March 2010 Mr Gowland advised as follows:

- a. The applicant's solicitors have not responded to several approaches regarding costs. Emails attached to the applicant's costs submissions were not received; and
- b. Costs will almost always follow the event; and
- c. In *New Zealand Airline Pilots Association IUOW v Registrar of Unions* [1999] 2 NZILR 550 the Court held that total hours expended are normally estimated to be between two to three times the hearing time; and
- d. In *BFS Marketing Limited v Field (No. 2)* [1993] 2 ERNZ 325, 328 Colgan J set out relevant factors to take into account in establishing costs; and
- e. As was determined by the Authority, the applicant's case lacked substance or merit and it is therefore appropriate that the respondent be granted a reasonable and realistic contribution to its legal costs, i.e. \$3,000 plus GST plus disbursements of \$150.

The Applicant's Position Summarised

[3] In submissions received on 5 March counsels for Ms Janor argued their client's case was arguable and on balance reasonably brought. A costs proposal was put by email dated 4 February 2010 to the respondent: no response was received.

[4] The costs considerations set out in *Graham v Airways Corp of NZ Ltd* [2004] 7 NZELC 97,421 and *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808 are relied on, in particular recognition of the Authority's unique investigative role.

[5] The investigation took only half a day and therefore any cost award should be modest. Having regard to the applicant's financial position and the proposed payment plan offered on 4 February, the Authority is asked to order costs of no more than \$750, to be paid in instalments of \$25.00 per week. The applicant has no savings and her weekly budget (dated 4 February and copied to the respondent that day) is detailed in attachments to her counsels' costs submissions.

Discussion and Findings

[6] The Authority's discretion with which to award costs is now well settled and typically follows the event: see *Da Cruz* above.

[7] After having regard to the parties' arguments, including Mr Gowland's claim the applicant pay reasonable costs and the undisputed realities of Ms Janor's financial situation, I am satisfied that a costs award against Ms Janor of \$750, to be repaid by weekly amounts of \$25.00 is fair and reasonable.

Determination

[8] Ms Janor is to pay the Company as a contribution to its fair and reasonable costs \$750 (seven hundred and fifty dollars).

Denis Asher

Member of the Employment Relations Authority