

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

5148742  
CA 66/10

BETWEEN	KATRINA DUNLOP Applicant	CARMEL
A N D	KAPITI SPORTS LIMITED t/a STIRLING DUNEDIN Respondent	SPORTS

Member of Authority: Paul Montgomery

Representatives: Jon Beck, Counsel for Applicant  
Richard Smith and Jenny Guthrie, Counsel for Respondent

Submissions Received: 18 January 2010 from the Respondent  
1 February 2010 from the Applicant

Determination: 15 March 2010

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In its ruling on the substantive issues, the Authority dismissed the applicant's claims. Counsel for the parties attempted to resolve the costs matter but were unable to do so.

[2] The applicant was legally aided and Mr Smith's primary submission to the Authority is that *exceptional circumstances* in the conduct of the applicant's case provide the grounds for a substantive costs award against Ms Dunlop. He seeks \$8,000 on behalf of his client as a contribution to its reasonably incurred costs.

[3] Unsurprisingly, Mr Beck disagrees and urges the Authority to make no costs award against his client and argues in rebuttal of Mr Smith's detailed reasoning.

[4] Having studied and considered the grounds on which counsel for the respondent has submitted are relevant to this case, I find the matters raised in support of there being exceptional circumstances fall short of the relatively high threshold.

That said, there appears to have been an inordinate amount of legal squabbling preceding the Authority's investigation, which can only have increased costs to both parties.

[5] In the last analysis, the applicant's case failed in its entirety but the respondent was put to considerable expense in defending itself. But for the applicant being in receipt of a legal aid grant, I would have awarded the respondent a contribution to its costs in the sum of \$4,000 plus disbursements.

[6] This is based on the tariff approach set out in *PBO Ltd (formerly Rush Security Ltd v. Da Cruz* [2005] 1 ERNZ 808 and starting with the daily rate of \$3,000. The upward adjustment is made in light of the applicant's failure to establish a dismissal at the employer's initiative had occurred, rather than at her own initiative and her attempting to re-categorise her acceptance of Mr I's apology following the first incident. Both issues took centre stage, considerable time and failed to convince.

[7] The applicant is to pay the respondent a sum equal to her contribution in securing the legal aid grant. I regret the Authority is unable to order her to pay more.

Paul Montgomery  
Member of the Employment Relations Authority