

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 89/10
5272558

BETWEEN	KARIN KNEDLER Applicant
AND	CHIEF EXECUTIVE OFFICER DEPARTMENT OF INTERNAL AFFAIRS First Respondent
AND	BEVERLEY KIRBELL Second Respondent
AND	CHIEF EXECUTIVE OFFICER MINISTRY OF WOMEN'S AFFAIRS Third Respondent

Member of Authority: G J Wood

Representatives: Gail Irwin for the Applicant
Peter Churchman for the Second Respondent

Submissions Received: By 28 April 2010

Determination: 6 May 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] This costs application relates to a determination of the Authority whereby I dismissed Dr Knedler's action for a penalty against the second respondent, Ms Kirbell, because it was filed well outside of the one year time frame provided in the Act for penalty actions to be brought.

[2] On behalf of Ms Kirbell Mr Churchman has sought indemnity costs on the basis that the proceedings were wholly misconceived, both because the penalty action was not commenced until well after the statutory time limit had expired, and with the

ulterior motive of extracting a remedy (an apology) which the Authority has no jurisdiction to grant.

[3] It was submitted that the proceedings were frivolous or vexatious and therefore justified indemnity costs. It was also noted that notwithstanding that the absolute time bar was drawn to Dr Knedler's attention, she continued to advance grounds which were incapable of resisting the application. Prior to the teleconference with the Authority to determine the application costs of \$4,063.50 inclusive of GST had been incurred. The sum is for 8.6 hours work at a charge out rate of \$420 per hour.

[4] On behalf of Dr Knedler, Dr Irwin claimed that she had not acted in a vexatious or frivolous manner, but only because of the potential effect on Dr Knedler's remedies after Ms Kirbell left the employment of the Department of Internal Affairs. Dr Irwin also claimed that Ms Kirbell ought not to be recompensed for full reimbursement for such a costly level of representation so early in the process, and that there were insufficient details provided to justify a claim for all the hours spent. It was therefore submitted that a nil costs award was appropriate.

[5] No doubt as senior counsel, Mr Churchman can justify such a charge out rate, but that is not the rate normally applied to matters in the Employment Relations Authority, particularly where the answer is as clear as in this case. The claim against Ms Kirbell was fundamentally misconceived and this was apparent from the outset. I therefore conclude, taking into account the costs for taking instructions and attending on a telephone conference that a reasonable award in this matter would be \$1,500.

[6] Because the claim for a penalty could simply never succeed, as it was well out of time, I conclude that it is appropriate that Dr Knedler meet all of Ms Kirbell's reasonable costs, namely \$1,500.

[7] I therefore order the applicant, Dr Karin Knedler, to pay to the second respondent, Ms Beverley Kirbell, the sum of \$1,500 in costs.

G J Wood
Member of the Employment Relations Authority