

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2012] NZERA Wellington 25
5351885

BETWEEN APERIRA HOHEPA-SMALE
Applicant

AND TE RAKAU HUA O TE WAO
TAPU TRUST
INCORPORATED
Respondent

Member of Authority: G J Wood

Representatives: Mary Hubble for the Applicant
Phil Mitchell for the Respondent

Investigation Meeting: By way of telephone conference on 5 March 2012

Date of Determination: 6 March 2012

DETERMINATION OF THE AUTHORITY

[1] The respondent, Te Rakau Hua o te Wao Tapu Trust Incorporated (“Te Rakau Trust”) has applied for an adjournment of the investigation meeting set down for hearing on 6 March 2012 on the basis that the Trust had suffered serious governance problems and had been unable to comply with undertakings made on its behalf. As a result the Te Rakau Trust sought an adjournment and agreed to comply with any directions of the Authority.

[2] The application was opposed, but if granted Ms Hohepa-Smale sought a contribution to her costs to date, plus security for costs on the grounds of potential impecuniosity.

[3] At the conclusion of the conference call I concluded that it was in the interests of justice for Te Rakau Trust to be involved in the investigation process and for its

officers to give evidence on its behalf to defend its actions, provided Ms Hohepa-Smale was recompensed for additional costs she will have to bear as a result. This was seen to be the best way to balance the interests of both parties, one of which, Te Rakau Trust, had taken none of the steps in advance of the investigation meeting that its former Chairman had agreed to.

[4] I accepted that Ms Hohepa-Smale had incurred extra costs because of two additional directions conferences that required preparation for, as well as additional preparation for the investigation meeting, due to affidavits prepared with an expectation that the Te Rakau Trust was not to attend or be represented at the investigation meeting.

[5] Even although it is normal procedure not to award costs until the case has been determined on its merits, because of the issues above this is not a normal case. I therefore order the respondent, Te Rakau Hua o te Wao Tapu Trust Incorporated, to pay to the applicant, Ms Aperira Hohepa-Smale, the sum of \$1,500 in costs.

[6] I dismiss Ms Hohepa-Smale's application for security for costs on the grounds of impecuniosity on the basis that the Authority has no jurisdiction to make such an order in these circumstances.

[7] The Te Rakau Trust has undertaken to comply with all future directions.

[8] I direct that the investigation meeting be held in Wellington on 8 May 2012 commencing at 10am, continuing if necessary on 9 May 2012.

[9] Written statements in preparation for the investigation meeting on behalf of Te Rakau Trust will be exchanged with the other side and forwarded to the Authority by 4pm 10 April 2012.

[10] Any statements in reply from Ms Hohepa-Smale are to be filed and exchanged by 4pm 24 April 2012.

[11] The parties are also to provide the Authority with two copies of an agreed, indexed, tabulated and paginated bundle of documents by 4pm 24 April 2012.

G J Wood
Member of the Employment Relations Authority