

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 279
5367029

BETWEEN JENNIFER KILPATRICK
Applicant

AND AIR NEW ZEALAND
LIMITED
Respondent

Member of Authority: R A Monaghan

Representatives: J Kilpatrick in person
D France, counsel for respondent

Memoranda received: 4 June 2013 from applicant
27 May 2013 from respondent

Determination: 4 July 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 30 April 2013 I found that Ms Kilpatrick's personal grievances on the ground that she was disadvantaged in her employment by her employer's unjustified actions had not been raised in time. Costs were reserved.

[2] Counsel for Air New Zealand has filed a memorandum seeking a contribution to costs in the sum either of \$3,000 or \$3,500, based on a notional one-day investigation meeting in the Authority. He acknowledged the matter was heard on the papers, but pointed to the lack of clarity about what actions were being relied on in support of the grievances. The company's attempt to address the matter, and the need to review significant amounts of documentation, caused it to incur considerable and unnecessary costs.

[3] Ms Kilpatrick replied saying in-house counsel could have been instructed in the matter, and that she has no resources to meet an order for costs.

[4] Air New Zealand was the successful party, and is entitled to seek a contribution to its costs. I accept there was a lack of clarity in precisely what was being claimed, which caused it to incur unnecessary costs. However I consider a notional hearing time of one half day is an appropriate basis for setting a suitable amount by way of contribution.

[5] I do not accept that anything in Air New Zealand's decision to instruct counsel – who appears regularly for it – should sound in costs. Secondly, Ms Kilpatrick provided no evidence beyond assertion as to her means, and I am unaware in particular of whether she has any assets. I do, however, note that the Authority accepted statements regarding her means at face value in *Kilpatrick v FARSA*.¹ The member also warned that embarking on litigation involves risk, including one of a requirement to contribute to the other party's costs if the litigation is unsuccessful.

[6] For these reasons Ms Kilpatrick is ordered to contribute to Air New Zealand's costs in the sum of \$1,750. Leave is reserved to request a consideration of orders for payment by instalment.

R A Monaghan

Member of the Employment Relations Authority

¹ [2013] NZERA Auckland 236