

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2014] NZERA Auckland 493  
5370073

BETWEEN            LESLEY HUGHES  
                                 Applicant  
  
AND                    BOARD OF TRUSTEES OF  
                                 ROTORUA GIRLS HIGH SCHOOL  
                                 Respondent

Member of Authority:    G J Wood  
  
Representatives:        P Morten, for Applicant  
                                 G Stone, for Respondent  
  
Submissions Received:    By 25 November 2014  
  
Determination:         03 December 2014

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In my substantive determination, I determined that Ms Hughes was unjustifiably selected for redundancy. I ordered the respondent, the Board of Trustees of Rotorua Girls High School, to reinstate her to her position as Head of Art with one management unit, although she had claimed for two. I also ordered \$600 net for an unpaid scholarship, \$7,500 in compensation, \$14,000 gross over the loss of management units, and \$2,280 net in course fees.

[2] On Ms Hughes' behalf, Mr Morten sought costs of \$7,000 plus disbursements of \$2,959.19. In support of this claim, Mr Morten submitted that Rotorua Girls High had unreasonably failed to accept a settlement offer and that higher costs should be awarded to her because of the complexity of the matter, even although it only took one day to investigate. Mr Morten also relied on a settlement offer that would have abandoned the claim for reinstatement and one management unit and left Ms Hughes with monetary compensation of \$31,500.

[3] Mr Morten noted that Ms Hughes had incurred costs well in excess of the \$7,000 claimed. I will deal with the expenses claims separately.

[4] Ms Stone, on behalf of Rotorua Girls High School, claims that costs should lie where they fall because it considers that Ms Hughes may not have actually incurred any costs personally, she was not wholly successful in her claims, and settlement offers were made by Rotorua Girls High. Ms Stone considers it likely that the costs have been incurred by Ms Hughes' union, the New Zealand Post Primary Teachers Association (PPTA), particularly as the expenses claims are made out to be to the PPTA.

[5] Ms Stone also noted that Ms Hughes was not successful in all of her claims, such as having ongoing entitlement to two management units, a claim for compensation greater than \$7,500 and an abandoned claim for 40 hours pay.

[6] Ms Stone submitted that settlement offers were of little relevance to the determination because the cost of management units meant that Ms Hughes was worse off under the Authority's determination and the respondent offered \$7,500 plus two middle management units in order to settle the matter.

[7] In the alternative, Ms Stone argued that the matter should be dealt with under the Authority's tariff based approach, which for a one day investigation would yield \$3,500.

[8] In response, Mr Morten accepted that the costs had been incurred by Ms Hughes' union, the PPTA. However, he submitted that the Authority has power to award costs in Ms Hughes' favour even although the costs were initially met by the PPTA.

[9] Mr Morten also submitted that Ms Hughes was successful to a large degree in the claim and therefore costs should follow the event. He also noted that the Rotorua Girls High offers did not include reinstatement or costs or compensation for the management units lost. It was therefore reasonable for Ms Hughes to reject that claim. Mr Morten also referred to the thorough submissions required subsequent to the investigation meeting.

[10] I accept that the offers to settle are of no particular assistance in this case. First, Ms Hughes was successful in her claim for reinstatement, which did not form

part of the negotiations. Second, both parties made assessments of the financial components to the package which are difficult to calculate (and would have been at the time) and difficult to compare with the Authority's awards. This is particularly so because of the issue of the prospect of further restructuring within Rotorua Girls High School and how that would impact on Ms Hughes' management units in the longer term. In effect, neither party's settlement claims were sufficiently compelling for them to have any impact on costs.

[11] I accept that Ms Hughes is entitled to claims for costs as the successful applicant, even although the union stands behind her. The claim was brought in her name even though she was supported by the union. Had she been unsuccessful she would have been liable for costs in her own name, again even if the union stood behind her.

[12] The most significant issue for determination on costs is whether or not there should be an uplift to the daily tariff, given that I accept that the costs claim is reasonable in and of itself. This was quite a complex case involving interpreting the parties' collective employment agreement on an issue that appeared to be untested. I therefore accept Mr Morten's submission that there was greater than normal complexity and that written submissions were required after the one day investigation meeting, both increasing reasonable costs.

[13] Taking those factors into account, I consider an uplift in costs of 40% is appropriate and therefore set costs at \$4,900.

[14] I reject the claim for expenses for the union's officials (one such witnesses' evidence was not even necessary). The witnesses were not summonsed and were there to assist in the proper interpretation of the collective employment agreement, which is of great benefit to the union. It is the role of a union to support its members as part of its ordinary business and not normally amenable to the refunding of witness expenses.

[15] However, this was a matter justifying the use of out of town counsel. The likelihood of suitable counsel being based in Rotorua for a matter of this sort is unlikely, as is shown by the fact that Rotorua Girls High School used counsel based in Auckland.

[16] Mr Morten's travel expenses should therefore be reimbursed by Rotorua Girls High School. I do not accept, however, that copying costs should be met by the High School. Such costs are the normal costs of representation and not subject to reimbursement. It is therefore appropriate to reimburse Ms Hughes for \$853.18 in expenses.

[17] I therefore order the respondent, the Board of Trustees of Rotorua Girls High School, to pay to the applicant, Ms Lesley Hughes, the sum of \$4,900 in costs and \$853.18 in expenses.

**G J Wood**  
**Member of the Employment Relations Authority**