

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN About Demolition and Contracting (2003) Limited (Applicant
186/ Respondent 270)

AND Ria Greening (Respondent 186/Applicant 270)

REPRESENTATIVES G Ogilvie, for Applicant/Respondent
R Foitzik, for Respondent/Applicant

MEMBER OF AUTHORITY G J Wood

INVESTIGATION By way of submissions received by 27 March 2006

MEETING

DATE OF

DETERMINATION 29 March 2006

COSTS DETERMINATION OF THE AUTHORITY

1. In my substantive determination I dismissed Ms Greening's claims for a personal grievance against the applicant/respondent (About Demolition), but also dismissed About Demolition's claims for breach of contract against Ms Greening.
2. On behalf of About Demolition Mr Ogilvie sought a contribution towards About Demolition's costs, which were \$5,805.00 excluding mediation. He noted that About Demolition incurred considerable extra costs in investigating matters which Ms Greening had previously denied but accepted when the extra evidence was produced.
3. On behalf of Ms Greening Mr Foitzik submitted that costs should lie where the fall. In this regard he noted that About Demolition's claims against Ms Greening had failed. Mr Foitzik also noted that About Demolition had failed to pay wages owing to her when dismissed and that Ms Greening did not file her grievance until About Demolition had already initiated proceedings in the Authority against her.

4. In response Mr Ogilvie noted that the investigation meeting was almost entirely devoted to Ms Greening's personal grievance claim, but accepted that \$200 should be deducted for About Demolition's unsuccessful claim against Ms Greening. Mr Ogilvie disputed the claim made on Ms Greening's behalf that she did not decide to pursue a grievance until About Demolition lodged an application with the Authority. Mr Ogilvie pointed to correspondence where Ms Greening raised a grievance on 11 May 2005, yet About Demolition's statement of problem was not lodged until 12 May 2005. Mr Ogilvie also noted that Ms Greening incurred no costs in pursuing this matter, unlike About Demolition.
5. In response Mr Foitzik noted that About Demolition has no way of knowing whether Ms Greening incurred any costs from her representatives.
6. The Authority, like any Court, is entitled to determine costs after ascertaining the success of both parties, including the success or failure of both claims and counterclaims. Mr Ogilvie was thus right to deduct \$200 from his claim for the unsuccessful claim against Ms Greening.
7. The key focus of the investigation was on the personal grievance. Here I accept that additional work was required of About Demolition in order to strengthen their evidence backing its claims, which demonstrated that Ms Greening's explanations to allegations against her were inadequate and misleading. This is a factor for increased costs in About Demolition's favour. By contrast, only a few minutes were spent on the damages claim.
8. This was a full day's investigation meeting and About Demolition is entitled to a contribution towards its costs. Given the extra preparation required, I conclude that a significant contribution towards those costs is appropriate. This amount must be offset, however, by the failure of About Demolition to pay Ms Greening all the money it owed her when she was dismissed, and the fact that About Demolition was unsuccessful in its claim against Ms Greening.

9. I therefore order Ms Ria Greening to pay to About Demolition and Contracting (2003) Limited the sum of \$2,500.00 in costs.

G J Wood
Member of Employment Relations Authority