

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Jennifer Batt (Applicant)  
**AND** Laine Furnishings (NZ) Pty Limited (Respondent)  
**REPRESENTATIVES** Garry Pollak, Counsel for Applicant  
John Gray, Counsel for Respondent  
**MEMBER OF AUTHORITY** Robin Arthur  
**DATE OF DETERMINATION** 16 November 2005

COSTS DETERMINATION

[1] A determination issued on 26 September 2005 (AA378/05) found the applicant was unjustifiably dismissed on 4 March 2005 and awarded her certain remedies.

[2] The parties were invited to agree costs with leave to file memoranda for a determination if they were unable to do so.

[3] The applicant filed an application for costs on 7 November and an opportunity for reply was provided to the respondent which filed a memorandum on 15 November.

[4] Meanwhile the respondent filed a *de novo* challenge to the Authority's determination in the Employment Court on 21 October 2005.

[5] In the respondent's memorandum on costs on 15 November Dr Gray advised that the respondent applied on 7 November 2005 for a stay of proceedings. There is a reference to that application being determined in the Authority but no application of that type has been made to the Authority. On my request, an Authority Support Officer enquired of Dr Gray who advised that reference was an error and the application for a stay has been made to the Employment Court. An enquiry to the Court's Registry today confirmed that the Court has not yet made any decision on the stay application.

[6] Dr Gray suggests that the costs issue be postponed pending the Court's decision on the stay application. I do not consider that is the best approach in this matter where the costs issue is straightforward. It is more practical and helpful for the Court and parties to have the Authority's determination available, if possible, when the Court comes to hear the challenge on the substantive determination. That way the judge can dispose of the entire matter, either way, without the prospect that the parties might have to come back to the Authority to "tidy up" the costs. If the Court does grant a stay of the Authority's determination AA 378/05 pending the Court's hearing and decision on the challenge, there is unlikely to be any real inconvenience in extending such a stay to this costs determination.

[7] The Authority has a discretion to award costs and expenses it considers reasonable. The discretion is exercised according to principles discussed in a number of earlier Court decisions. Costs follow the event so that the successful party is entitled to a contribution to her or his reasonable costs. Criteria to take into account include the importance of the case to the parties, the way the case was conducted, the conduct of the parties at the hearing, the amount of time required for effective preparation, whether arguments lacked substance or took unduly technical points, and actual costs incurred. Regard is also had to the investigative nature of the Authority's process and the objects of the Act. Awards of costs in the Authority are modest. The normal range of costs are discussed in *Harwood v Next Homes Limited* [2003] 2 ERNZ 433 (EC, Travis J) and *Graham and Airways Corporation of New Zealand Limited* (unreported, ERA Auckland, AA39/04, 28 January 2004, Alastair Dumbleton).

[8] During an investigation meeting for this matter which lasted less than two hours, three witnesses were heard and questioned by the Authority member and counsel and, by prior agreement with counsel, closing submissions were made and discussed with the Authority member. The issues and evidence were precise and the submissions and discussion were concise.

[9] I accept the submission in the applicant's memorandum on costs that there were no aspects of this matter or its presentation by parties which would warrant costs outside of the normal range. I also accept the respondent's submission that any costs awarded should be awarded on a contribution rather than full indemnity basis and should be calculated on the basis of the hearing time with an appropriate multiplier for preparation. An award of the applicant's full legal costs of \$2,102.19 is not warranted.

[10] Taking the meeting time as two hours, applying a multiplier of 1.5 for preparation time and a hourly rate of \$250 for counsel results in a sum of \$1250 of reasonably incurred costs. I consider the sum of \$1000 to be a reasonable contribution to be required from the respondent towards those reasonably incurred costs of the applicant.

[11] The applicant is also entitled to reimbursement of her filing fee of \$70.

[12] **The respondent is ordered to pay the applicant the sum of \$1070 as a contribution to her costs and expenses.**

Robin Arthur  
Member of Employment Relations Authority