

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Telesia Blaker (Applicant)
AND Mainfreight Limited (Respondent)
REPRESENTATIVES Paul Pa'u, Counsel for Applicant
Lorne Campbell, Counsel for Respondent
MEMBER OF AUTHORITY Janet Scott
INVESTIGATION MEETING 25 November 2004
DATE OF DETERMINATION 22 September 2005

COSTS DETERMINATION OF THE AUTHORITY

The applicant brought a personal grievance claim she had been unjustifiably dismissed. The applicant was successful in that claim. The applicant subsequently sought compliance with the Authority's decision.

The respondent has challenged the substantive determination. It opposed the application for compliance and sought a stay of the determination. These latter applications were dealt with in a separate Determination AA 311/05. By consent the respondent agreed to pay into an interest bearing account in the Employment Court the totality of the sums awarded by the Authority pending the outcome of the respondent's challenge. As a result the compliance application was withdrawn.

This costs determination settles all costs between the parties in the Authority in respect of applications AEA 344/04 and AEA 288/05.

The power to award costs is contained in the Second Schedule of the Employment Relations Act 2000. The general principles to be applied in cost applications are set out, in case law including *NZALPA v Registrar of Unions* (1989) NZILR,550, *Okeby v Computer Associates (NZ) Limited* [1994] 1 ERNZ 613 and *Reid v New Zealand Fire Service Commission* [1995] 2 ERNZ 38. The criteria to be taken 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 over and above that which would ordinarily be inferred, whether arguments lacking in substance were advanced or whether unduly legalistic and technical points were taken and the actual costs incurred.

Discussion

The parties have made submissions on costs and I have carefully considered those submissions and the relevant case law including that which addresses costs in the Authority including Harwood v Next Homes Ltd unreported decision AC 70/02.

The hearing occupied just over half a day in the Authority. The matter was conducted efficiently on the day but subsequent delays were incurred in setting the lost remuneration. This was occasioned, I must find, by the failure of counsel for the applicant to promptly respond to the Authority's clear request for information necessary to determine lost remuneration. There were numerous requests made for the necessary information and at least two telephone conferences were held to pursue finality in the matter. This resulted in unnecessary additional cost to the respondent.

Determination

Taking all factors into account I find that costs (awarded on the basis of a reasonable contribution) should be awarded to the applicant in the sum of \$750 plus \$70 to reimburse her for the filing fee incurred in bringing this matter to the Authority.

In the matter of the application for compliance and the application for a stay I determine that costs are to lie where they fall.

Janet Scott
Member of Employment Relations Authority