

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2011] NZERA Wellington 103

File Number: 5312497

BETWEEN

JEFFREY & PATRICIA

CHURCHILL

Applicants

AND

COGNITION EDUCATION

LIMITED

Respondent

Member of Authority: Denis Asher

Representatives: Robert Brace for Mr & Mrs Churchill
Stephen Langton for the Respondent

Submissions received: 13 June 2011

Determination: 15 June 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] The Churchills were unsuccessful in their claim that the respondent (Cognition) owed them each one month's salary (refer to [2011] NZERA Wellington 69).

[2] Costs were reserved. I noted at the time that this had been a half day investigation, that costs typically followed the event and, subject to submissions, an award of \$1,500 to \$2,000 might be deemed appropriate.

[3] Cognition now seeks costs.

The Respondents' Costs Submissions Summarised

[4] In submissions received on 1 & 13 June Cognition says it sought on two occasions to resolve costs by consent by, given my observations regarding costs, inviting the applicants to pay \$2,000 and airfares for travel to Wellington for the investigation.

[5] No reply was received other than that the Churchill's counsel had been overseas and instructions would be sought.

[6] The argument as to the respondent's resources is not relevant to any assessment of whether a reduced costs award should be made in its favour.

The Churchills' Costs Submissions Summarised

[7] In a memorandum received on 7 June the Churchills argued that an award of \$1,500 would be appropriate as an order for costs is neither punitive nor designed to pay the actual costs of a party but is a contribution towards the costs of the successful party.

[8] Cognition is well able to meet its costs.

[9] The applicants have acted in good faith throughout and there were legitimate questions of interpretation of the contract of employment that need to be dealt with.

[10] Payment of \$1,500 could be effected promptly.

Discussion and Findings

[11] The Authority's discretion with which to award costs is now well settled and typically follows the event: *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.

[12] This is an unexceptional claim and the parties were alerted to the costs risks during the investigation.

[13] Cognition elected to obtain Auckland-based counsel for the Wellington investigation when it could have been represented locally. I am therefore satisfied costs for airfares should not be recovered.

[14] In all the circumstances I am satisfied that \$1,800 is an appropriate contribution to reasonable costs arising out of the investigation.

Determination

[15] Jeffrey and Patricia Churchill are to pay, as a contribution to Cognition's reasonable costs, the sum of \$1,800 (eighteen hundred dollars).

Denis Asher

Member of the Employment Relations Authority