

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2011] NZERA Wellington 133
5308342

BETWEEN JASMINE COOPER
Applicants

AND SECRETARY FOR
EDUCATION
Respondent

Member of Authority: Denis Asher

Representatives: Ms Cooper represented herself
Trish MacKinnon for the Respondent

Submissions received: 5 August 2011

Determination: 5 August 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] Ms Cooper was unsuccessful in her claim that she was unjustifiably disadvantaged and similarly constructively dismissed by the respondent (the Ministry) (see [2011] NZERA Wellington 12).

[2] Costs were reserved.

[3] The Ministry now seeks costs.

The Ministry's Costs Submissions Summarised

[4] In submissions received on 7 & 25 & 4 August the respondent relies on the Authority's discretionary power to award costs under Schedule 2, clause 15 of the Employment Relations Act 2000 (the Act) and on *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.

[5] The investigation spread over two days as a result of the applicant's failure to focus on pertinent issues and relevant evidence, notwithstanding the Authority's guidance.

[6] The Ministry is able to seek costs despite being represented by in-house legal counsel: *Henderson Borough Council v Auckland Regional Authority* [1984] 2 NZLR 16, etc.

[7] Counsel's hourly cost to the employer is \$70: using a multiplier of 3 days preparation for each one day of hearing, counsel's costs were \$1,575. Four hours of administrative assistance were also provided, at a cost to the Ministry of \$105. Witness costs of \$421.12 were also incurred in respect of one person no longer employed by the respondent. Therefore costs of \$2,101.12 are sought which, in all the circumstances, are reasonable.

[8] As Ms Cooper gave evidence of employment there should be no impediment to her meeting those costs.

Ms Cooper's Costs Submissions Summarised

[9] In submissions received on 21 July and 5 August, and on the grounds that the issues were longstanding, and because of the parties' disparate resources, the Ministry's steadfast refusal to find a resolution in mediation and because of the ensuing stress experienced by her, Ms Cooper proposed that costs should lie where they fell.

Discussion and Findings

[10] The Authority's discretion with which to award costs is now well settled and typically follows the event: *Da Cruz* (above).

[11] I accept the respondent's submission that costs are recoverable in respect of representation by in-house counsel: *Henderson Borough Council* (above) applied.

[12] I do not accept the argument advanced by Ms Cooper as sufficient or proper reasons to not apply the Authority's discretion in favour of the Ministry. Ms Cooper was alerted early into the investigation as to the risks of an unsuccessful outcome should her claims not succeed.

[13] Her claims the issues were longstanding, caused her stress and that the inability to settle arose out of the Ministry's stance are indirect efforts to relitigate the applicant's substantive claims. They are not grounds for defeating the Ministry's legitimate and foreseeable claim for costs.

[14] In all the circumstances I am satisfied that \$1,500 is an appropriate contribution to reasonable costs arising out of the investigation.

Determination

[15] Ms Cooper is to pay, as a contribution to the Ministry's reasonable costs, the sum of \$1,500 (one thousand and five hundred dollars). Ms Cooper may wish to explore a realistic repayment schedule with the respondent.

Denis Asher

Member of the Employment Relations Authority