

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Simone Joy Corbett (Applicant)
AND Department of Corrections (Respondent)
REPRESENTATIVES Joan Forret, Counsel for Applicant
Christina Inglis, Counsel for Respondent
MEMBER OF AUTHORITY Ken Anderson
SUBMISSIONS RECEIVED 1 December 2005 and 22 December 2005
DATE OF DETERMINATION 24 March 2006

DETERMINATION OF THE AUTHORITY AS TO COSTS

The Applicant was unsuccessful in pursuing an alleged personal grievance. The Respondent now seeks a contribution to the costs incurred.

The total costs incurred by the Respondent, excluding GST, but including the cost of mediation, are \$15,100.80 plus disbursements of \$1,255.91. The Respondent seeks a contribution towards those costs in the sum of \$7,000, plus the disbursements.

The Respondent submits that the Applicant should pay a substantial contribution towards its costs as there were some aggravating factors, namely:

- (a) The Applicant failed to succeed on any point and pursued matters that were clearly untenable and lacking in merit.
- (b) The Applicant made serious allegations against Prison Officers that were not substantiated.

The Applicant refers the Authority to the well known precedents applying to the discretion applying to award of costs and in addition, submits that:

- (a) The case was important to the Applicant and she was seeking reinstatement to her previous position.
- (b) The Applicant did not extend the hearing process unnecessarily with the investigation meeting only taking one day.
- (c) The Applicant does not have the ability to pay costs without undue hardship as at the time of the submissions, she was unemployed, plus she had incurred significant costs in pursuing her alleged grievance.

- (d) The Applicant denies the aggravating factors advanced by the Respondent and says that the costs sought by the Respondent are in excess of the average awards made by the Authority.

Analysis

It is my conclusion that there was nothing particularly out of the ordinary about the substantive proceedings. While the claims of Ms Corbett were somewhat misguided and lacking in merit, I do not accept that there were any aggravating factors that warrant recognition in an award of costs.

It is submitted for Ms Corbett that she does not have the ability to pay costs without undue hardship but no evidence has been presented to support that submission. Ms Corbett also says that she has incurred significant costs in pursuing her case, but then on the other hand, she has continued on to pursue matters further in the Employment Court.

Taking into account the totality of the submissions, it seems to me that the discretion of the Authority to award costs should be exercised as follows.

The investigation meeting occupied one day. Allowing for an average amount of time for preparation, the time factor can be assessed based on the following calculation:

By allowing a hearing time of 8 hours and using a multiplier of 2 for preparation – that is 16 hours. Using a reasonable hourly rate of \$300 a sum of \$4,800 is arrived at. Applying the generally recognised two thirds “rule of thumb” produces a sum of \$3,200 as being a reasonable contribution to the costs incurred by the Respondent. I have also taken into account that the claims of Ms Corbett had little or no merit. Given that disbursements also have to be taken into account, I reduce that sum to \$3,000.

Reasonable disbursements incurred by the Respondent, directly related to the investigation meeting, total \$727.87.

While I appreciate that there is some authority from the Employment Court that allows for the costs associated with mediation to be taken into account, it is not the general practice of the Authority to recognise such costs.

Determination

Ms Corbett is ordered to pay to the Department of Corrections costs in the sum of \$3,000 plus disbursements of \$727.87 – a total of **\$3,727.87**.

Ken Anderson
Member
Employment Relations Authority