

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Grant Alexander Craigie (Applicant)
AND Air New Zealand Limited (Respondent)
REPRESENTATIVES Ray Parmenter, counsel for Applicant
Kevin Thompson, counsel for Respondent
MEMBER OF AUTHORITY Alastair Dumbleton
COSTS SUBMISSIONS 22 August 2005 (respondent only)
RECEIVED 21 November 2005
DATE OF DETERMINATION

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] In a memorandum received on 22 August 2005, the respondent Air New Zealand Limited (Air NZ) advised the Authority that the question of costs on the two applications made by Mr Grant Craigie had not been resolved by agreement. (The relevant Determinations are under AA 47/04 and AA 127/05.) Pursuant to leave reserved Air NZ asked the Authority to fix costs between the parties.

[2] I note that a copy of Mr Thompson's memorandum was forwarded by him to Mr Parmenter, counsel for Mr Craigie, on or about 18 August 2005. The Authority also wrote to Mr Parmenter about the costs memorandum and the fact that no response had been received. In its letter of 10 October 2005 the Authority advised that a response could be made, so long as it was received before 25 October 2005.

[3] No response to the costs application has been given. The Authority does not know why that is but the reason may have something to do with the recent hearing before the Employment Court of a challenge by Mr Craigie against the Authority's second determination in which his dismissal by Air NZ was found to be a justified dismissal.

[4] It may be that if Mr Craigie is successful in his challenge this costs decision I am about to make in favour of Air NZ will be set aside and replaced by the Court's decision on costs. Without knowing the result of the challenge at this time, principle requires the Authority to proceed and fix costs against the eventuality, should it arise, that the challenge is not successful.

[5] The Authority completely agrees with what Mr Thompson has said in his memorandum in support of the application for costs. The principles generally applied by the Authority in fixing costs have been correctly stated and the various features of the particular case which are relevant to the way the discretion should be exercised, have also been correctly identified I find.

[6] Air NZ seeks a reasonable contribution to its actual costs in successfully opposing the application for interim reinstatement and in also successfully resisting the grievance claims that were investigated and determined substantively later. Air NZ seeks an award of \$10,000, which is less than a third of actual costs.

[7] The case was an unusual one, as the misconduct relied upon as grounds for dismissal had occurred over several years and the nature of each instance was different. The case therefore required more time than might otherwise be necessary for preparation, particularly in relation to the collection and presentation of a large number of documents. A larger number of witnesses were required for the investigation meeting and the preparation of final submissions was a critical phase of the case.

[8] I conclude that \$10,000 will be a reasonable contribution to costs that ought to be made by Mr Craigie to Air NZ. An award at that level will not be inconsistent with principle and will recognise the particular circumstances of the case. Mr Thompson points out that it will equate to a little over \$3,000 per hearing day but will still be within the range of awards for cases of similar complexity and value. I agree.

[9] Accordingly, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000, the Authority orders Mr Craigie to pay Air NZ costs of \$10,000.