

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Jennifer Crook (Applicant)
AND Sovereign Insurance New Zealand Limited (Respondent)
REPRESENTATIVES B Buckett for Applicant
B Fleming for Respondent
MEMBER OF AUTHORITY G J Wood
SUBMISSIONS RECEIVED 17 May 2006
DATE OF DETERMINATION 18 May 2006

COSTS DETERMINATION OF THE AUTHORITY

1. In my substantive determination I dismissed Ms Crook's claims that the respondent ("Sovereign") had failed to provide her with a safe workplace and had constructively dismissed her.
2. On behalf of Sovereign, Ms Fleming seeks a contribution to Sovereign's costs, which comprise \$74,705.50, of at least \$7,500, plus disbursements of \$4,867.71. Ms Fleming claimed that a greater award than normal was applicable because the investigation meeting took three days, involved a significant amount of evidence including medical evidence and there were significant disparities of fact in relation to the evidence that were all found in Sovereign's favour.
3. In response Ms Buckett submitted, in reliance on *PBO Ltd (formerly Ross Security Ltd) v. Da Cruz* unreported, Colgan CJ, Travis and Shaw JJ, AC2A/05, 9 December 2005, that costs need not be determined by the Authority in the same way as they would be in the Employment Court. It was noted that an award of costs of \$7,500 would be at the high end of the Authority's average daily rate, amounting to \$3,000 per day for the

2½ days of the investigation meeting, as one half a day was occupied in an attempt at settlement between the parties.

4. Ms Buckett also submitted that Ms Crook was not in a position to pay costs because her income protection insurance does not cover her outgoings. She also opposed the claim for disbursements of the costs of counselling of one of Sovereign's witnesses and its employee. I concur that this was a disbursement outside the range of expenses to be met by another party.
5. There is insufficient material before me to conclude that Ms Crook is unable to meet any costs. There is no information for instance about any savings or other assets that she may possess. Furthermore it is clear that the applicant is on an income above the average wage and should be able to meet any costs awarded against her, over time at least.
6. I find that an award of costs at the upper level of the normal \$2,000 to \$3,000 range per day is appropriate in this case. A number of conference calls had to be held because of the failures by Ms Crook and/or her representative to progress matters, particularly over the provision of professional psychiatric evidence. Furthermore, Ms Crook's evidence contained a number of claims, which extended the investigation, which had not been raised in her written statements and were found not to have any substance.
7. For these reasons and the submissions raised by Sovereign I conclude that a higher than average award should be made for the investigation, which I find did effectively take 2½ days.
8. I therefore order the applicant, Ms Jennifer Crook, to pay to the respondent, Sovereign Insurance New Zealand Limited, the sum of \$7,500 in costs and \$4,707.71 in disbursements.

G J Wood
Member of Employment Relations Authority