

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Steve Cullen (Applicant)
AND Power Marketing Ltd (Respondent)
REPRESENTATIVES Ken Nicholson and Keshwant Kaur, for the Applicant
Margaret Matthew, for the Respondent
MEMBER OF AUTHORITY Marija Urlich
INVESTIGATION MEETING 6 July 2005
DATE OF DETERMINATION 20 December 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] In my determination of 29 August 2005 I found Mr Cullen's dismissal was justified and that no grounds existed to award the remedies he sought. The issue of costs was reserved and the parties were invited to attempt to reach resolution themselves. These attempts have been unsuccessful and the parties have filed submissions seeking the Authority determine this matter.

[2] Ms Matthew, in her submissions, advises the total costs incurred by the respondent in opposing Mr Cullen's claim was \$6,220.29. She seeks a contribution towards those costs of a sum greater than two-thirds of actual costs incurred because, she submits, there were a number of factors in the way Mr Cullen's claim was framed which required additional and unnecessary expense and the Authority's decision was conclusive on these issues.

[3] Mr Nicholson and Ms Kaur submit that costs should lie where they fall or, in the alternative, any costs award should be nominal. They submit further that Mr Cullen should not be punished because he was the unsuccessful party, that he suffered a degree of impecuniosity in the months following his dismissal and that he properly exercised his right to bring a personal grievance.

[4] I am of the view that this is an appropriate case for an award of costs. The respondent was successful and there is no reason, in this situation, why the Authority should depart from the usual principle that costs follow the event. The investigation meeting involved one day following which written closing submissions were filed. Mr Cullen's claim involved alternative claims of unjustified dismissal and unjustified constructive dismissal. This framing introduced a degree of complexity to the issues the Authority needed to investigate, which, I accept, has impacted negatively on the costs incurred by the respondent. I have received no submissions as to Mr Cullen's financial status now and take from that that he is able to meet any costs award made against him.

[5] In all the circumstances and taking into account the principles relating to costs as set out in *New Zealand Airline Pilots Assoc v The Registrar of Unions* [1989] 2 NZILR 550 and *Reid v Fire Services Commission* [1995] 2 ERNZ 38 I am of the view an appropriate award of costs, including

disbursements, is \$2000.

[6] I order Stephen Cullen to pay Power marketing Limited the sum of \$2000 as a contribution to costs incurred.

Marija Urlich
Member of Employment Relations Authority