

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2015] NZERA Wellington 4  
5523077

BETWEEN            MICHAEL DAY  
                                 Applicant

AND                    MILLS CHAPMAN  
                                 COMMUNICATION NEW  
                                 ZEALAND LIMITED  
                                 Respondent

Member of Authority:    G J Wood

Representatives:        J Marinovichh for Applicant  
                                 J Woodham-Mills for Respondent

Investigation Meeting:    On the papers

Submissions Received:    By 19 December 2014

Determination:            16 January 2015

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] This matter was originally filed with the Authority in March 2014 as a personal grievance as file 5432360. Mediation was agreed to by the parties and resulted in a settlement under s.149 of the Employment Relations Act 2000 (the Act). The settlement provided for a reference "*on company letterhead*" to be signed by three particular people. The detail to be contained in the reference was set out in an appendix to the settlement. The signed reference on company letterhead was to be provided by 2 July 2014.

[2] Mr Day was dissatisfied with the document that arrived because it was said to be on a different letterhead to the one that the respondent (Mills Chapman) normally used and the signatories could not be identified. Three written requests for this to be

addressed, including one by the mediator, were not responded to. Mr Day's representative, Mr Marinovich, subsequently spoke to Mr Michael Mills, one of the company's directors, who advised that the matter would be addressed. However, when followed up, Mr Marinovich was informed that the directors were on leave. As a result, Mr Day filed with the Authority in October 2014 seeking compliance and costs associated with enforcing the record of settlement.

[3] In her response on behalf of the respondent (Mills Chapman) Ms Woodham-Mills noted that the correct letterhead had been supplied and indicated that the signatures of the three parties required would be attended to that day, namely 3 November 2014. The letter was re-presented to Mr Day's satisfaction thereafter.

[4] On behalf of Mr Day, Mr Marinovich seeks contribution to the applicant's costs of \$1,000 plus GST, together with disbursements of \$96.76, which involved the filing fee and \$25.20 in photocopying expenses.

[5] Ms Woodham-Mills denies that there was significant contact from Mr Marinovich (i.e. only one phone conversation) and submits that the hours involved are excessive for a matter of this simplicity, that Mr Day sought changes to the letter from those agreed to and that the correct employer's letterhead was used throughout. It was therefore submitted that no costs should be awarded.

[6] In response, Mr Marinovich submitted there had been significant contact with Mills Chapman including by the mediator, denied that changes were sought to the agreed form of the letter and noted the time involved in pursuing the matter.

[7] In her response, Ms Woodham-Mills noted that Mills Chapman had a justifiable reason for not getting one of the signatures.

[8] The issue of the reference is a straightforward matter that should not have needed the Authority's involvement. Mills Chapman must take responsibility for not following the terms of the agreement in full and not dealing with the matter promptly when the issues were drawn to its attention. On the other hand I accept that the correct letterhead was provided throughout so this was only a matter of one incorrect signature.

## **Determination**

[9] This matter should not have required the involvement of the Authority. In addition, costs for mediation, which is effectively what this matter involved, are normally excluded from costs awards in the Authority. There are two reasons, however, why a modest contribution to Mr Day's costs are appropriate. First, as a matter of public policy, the sanctity of settlement agreements must be supported by the Authority. Second, Mills Chapman chose to ignore the involvement not only of Mr Marinovich but also a mediator for several months. Thus an application to the Authority for compliance appears to have been necessary to prompt a response from Mills Chapman. On the other hand any award must be tempered by the importance of keeping relatively small matters such as this in perspective.

[10] Taking all these factors into consideration I consider that an appropriate sum for reimbursement of costs is \$175 plus GST, namely \$201.25 (half an hour's legal fees), plus \$71.56 for the filing fee. Photocopying costs are a matter between a party and its representative.

[11] I therefore order the respondent, Mills Chapman Communications New Zealand Limited, to pay to the applicant, Mr Michael Day, the sum of \$201.25 in costs and \$71.56 in expenses.

**G J Wood**  
**Member of the Employment Relations Authority**