

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 432
5313372

BETWEEN MARTIN DAY
 Applicant

AND MULTI MEDIA SERVICES
 LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: Alan Vane, Counsel for Applicant
 Garry Lough, Director of Respondent

Submissions received: 18 August 2011 from Respondent
 30 August 2011 from Applicant

Determination: 04 October 2011

COSTS DETERMINATION OF THE AUTHORITY

A Multi Media Service Limited's application for costs is dismissed.

[1] In a determination dated 20 July 2011¹ the Authority (Member Campbell) held that Mr Martin Day had been unjustifiably disadvantaged in his employment with respect to the issuing of a final warning but that his dismissal was justified.

[2] Mr Day was and is still legally aided.

[3] Paragraph 54 of the Authority's substantive determination reserved costs and encouraged the parties to resolve costs themselves. If agreement was not reached a timetable was set for costs to be dealt with by exchange of memoranda.

[4] The parties were given 28 days within which to lodge and serve costs memoranda, with any responses required to file within 14 days of service. The

¹ [2011] NZERA Auckland 320

Authority stated “*No application for costs will be considered outside this time frame without prior leave.*”

[5] Costs memoranda were therefore due by 17 August 2011. No memoranda were filed by this date and no application for leave to vary the timetable has been received.

[6] The respondent filed its application for costs on 18 August 2011 but this was not accompanied by an application for leave to do so out of time. The applicant in his costs submissions took issue with the respondent filing its application for costs out of time.

[7] Pursuant to clause 16, Schedule 2 of the Employment Relations Act 2000 I now determine costs.

[8] The Authority expects that parties will comply with the timetable it sets. If a party faces difficulty complying with a timetable then the appropriate action is for it to seek leave from the Authority to vary the timetable, before it expires.

[9] Costs are discretionary. Leave is not granted to vary the Authority’s original timetable and I decline to accept any costs submissions out of time.

[10] No costs will be awarded in respect of this matter. Accordingly, the respondent’s application for costs is dismissed.

Rachel Larmer
Member of the Employment Relations Authority
(*Per clause 16, Schedule 2, ERA 2000*)