



# New Zealand Employment Relations Authority Decisions

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## Edwards v Adobe Air Conditioning Limited (Wellington) [2011] NZERA 552; [2011] NZERA Wellington 132 (3 August 2011)

Last Updated: 24 August 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2011] NZERA Wellington 132

5326544

BETWEEN

AND

KAREN EDWARDS Applicant

ABODE AIR CONDITIONING LIMITED

Respondent

Member of Authority: Representatives:

Investigation Meeting: Submissions Received: Determination:

P R Stapp Applicant in person

Ross Crotty, Counsel for the Respondent

On the papers

by 27 July 2011

3 August 2011

### COSTS DETERMINATION OF THE AUTHORITY

#### Employment relationship problem

[1] This matter relates to an application that did not go forward to a scheduled investigation meeting. The application was withdrawn by the applicant before the scheduled investigation meeting. The respondent has applied for \$2,000 plus GST costs. The applicant opposes the claim.

#### Issues

[2] Is this a matter for costs? If so, how much?

#### The facts

[3] The applicant lodged a statement of problem in the Authority on 16 November 2010 and paid \$71.56 filing fee. The application related to a personal grievance claim and remedies.

[4] On 1 December 2010 the respondent filed a statement in reply. The respondent denied the claims. It raised a preliminary matter needing a decision first.

[5] Reasons were given as to there being no mediation attempted by the parties.

[6] In a Minute dated 20 December 2010 I covered my reasons for not directing the parties to attend mediation. A timetable was put in place for the preparation and submissions for an investigation meeting on the papers. Notice was also given for an investigation meeting to take place on 12 April 2011 to hear submissions. This was later changed to 17 May 2011 and then,

finally, 21 July 2011. The changes were made first when the applicant was not able to get time off work to attend an investigation meeting and secondly to accommodate the respondent because of health reasons relating to one of its witnesses.

[7] In the meantime an affidavit was received from the applicant and the respondent provided an affidavit in reply with attached documents in support.

[8] On 6 July 2011 the applicant's representative withdrew from the matter. From this point the applicant was unrepresented and the respondent with its knowledge of her personal circumstances took appropriate action with the Authority to get clarity on whether or not there would be an investigation and to save costs.

[9] The applicant withdrew her claim on 15 July 2011 (by email) after the Authority was notified by the respondent that Ms Edwards had left New Zealand, her house keys had been handed to the bank, her house is on the market under mortgagee sale and her companies are in liquidation.

[10] The respondent has asked for \$2,000 plus GST for the reply in evidence filed and attendance at two telephone conferences.

[11] The applicant claimed that she will be unable to pay as she is bankrupt, currently not working and on a benefit. There have been no other details or supporting documents provided by the applicant regarding her claim.

## **Outcome**

[12] The applicant had the right to withdraw under the Act at any time. However, the arrangements in place and the three investigation meeting dates set reasonably led the respondent to believe that the applicant was committed to the claim. In addition, the respondent has been put to some costs because it has been represented by Counsel and an affidavit was filed in regard to the claim. This related to the preliminary matter and an agreed process.

[13] I have had no details on the costs claimed and time involved for preparation from the respondent. I consider that fixing a contribution on the tariff approach to costs would be the basis to proceed and to reflect the preliminary matter involving one affidavit and assembling exhibits. Submissions were not filed because the applicant withdrew the claim. There was no investigation meeting because of the withdrawal. The decision to deal with the preliminary matter first would have limited costs.

[14] There have been costs incurred by the parties for the statement of problem and statement in reply and telephone conferences as part of the parties' preparation. There were two telephone conferences to organise the investigation. I accept that the defence raised that involved a preliminary matter by the respondent was genuine and based on the information available. Any sum for costs would have to be at the lower end of the tariff, especially given that submissions on the preliminary matter were not needed and the investigation meeting was not required and that the withdrawal was made in adequate time (15 July 2011) before the planned investigation meeting (21 July 2011) to save costs. Fortunately and prudently out of concern the respondent initiated this. The applicant had not disclosed any of her financial difficulties. The decision to deal with the preliminary matter on the papers was intended to save costs anyway.

[15] I can not find anywhere that the applicant is a notified bankrupt as claimed. There is no listing in the usual places. Therefore I conclude that she probably means she is destitute or has some serious financial difficulties. Her financial difficulties relate to what she says her circumstances are and what the respondent understands her circumstances are. Accepting that she has some financial difficulties, I can not determine the actual extent of them from the information I have been provided with. In the absence of any information to support her I have to hold that she may be able to pay some time in the future. I also consider that costs are not to penalise a party and this has to be balanced with the applicant's right to withdraw at any time. Critically Ms Edwards did so just in time.

[16] There has been no breakdown of the costs claimed by the respondent. I have not been made aware of who did the work and incurred the time for the preparation of one affidavit and the assembly of the documents attached to the affidavit and statement in reply. Usually costs associated with the attendance at the telephone conference and preparation of the statement in reply are incurred by the parties and if costs are applied they are usually associated with the notional tariff where there has been an investigation meeting. Having regard to the respondent incurring some costs, the possibility of the applicant being able to pay in the future, that the costs were limited by agreement to deal with the preliminary matter first, that the process was underway and the applicant upon the respondent's initiative withdraw her claim in an adequate time before submissions and an investigation meeting and before more costs were incurred, I hold that costs should lie where they fall.

## **Conclusion**

[17] It is my decision that costs should lie where they fall.

**P R Stapp**  
**Member of the Employment Relations Authority**

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