

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 28A/10  
5160542

BETWEEN

JANITA EDWARDS  
Applicant

A N D

TIN FILLERS CATERING  
LIMITED  
Respondent

Member of Authority: Paul Montgomery

Representatives: Mike Timings, Counsel for Applicant  
Paul Washington, Advocate for Respondent

Submissions Received: 23 February 2010 from the Respondent  
11 March 2010 from the Applicant

Determination: 16 March 2010

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In its determination on substantive issues, the Authority declined the applicant's claims while expressing some empathy for the situation which arose between the parties.

[2] For the respondent, Mr Washington submits that while he represented the company himself, the respondent sought legal advice on preparation and presentation of its evidence. He advises his solicitor did not charge for his assistance and makes no claim in this regard.

[3] The respondent's submission lists a range of expenses said to have arisen in the course of defending the company. These total \$1,932.60 and include attendance costs of \$180 for one witness for the respondent. Also included are expenses relating to *time to research and respond to accusations – 35 hours @ \$33 each and 17 hours*

*loss of wages @ \$33 each to carry out Janita's tasks when walked out and to attend investigation meeting.*

[4] For Ms Edwards, Mr Timings submits a range of authorities in support of the contention that certain expenses cannot be claimed where a party represents itself. Further, he submits, citing *Open Systems Ltd v. Pontifex* [1995] 2 ERNZ 216, Goddard CJ, in which the Court said:

*The situation changes dramatically when the person involved is himself or herself the producer of output for the business. This is particularly so where the employer concerned is a one man company or a sole trader, but could also be a relevant consideration in cases involving partnerships or small companies. The cost to the employer in that case is that it has to go on paying salary of the executive while getting no production in return. ... In such cases, there is no reason in principle why an award cannot be made in recognition of the value of the time devoted to representation.*

[5] Mr Washington is a co-owner and director of the respondent company. He undertakes a range of tasks for the company before starting work with a major New Zealand company. In that sense, he is not *the producer of output for the business*, however, his tasks are central to the operations of the company and while there is no basis given for the charge out rate of \$33 per hour, I am of the view the respondent is entitled to some contribution for the time deployed in preparing for the Authority's investigation meeting. I also am of the view that expenses relating to copying, printing, parking, postage and stationery need to be considered.

[6] Having considered the submissions of each party, I am of the view that the applicant needs to meet some of the expenses incurred by the company. On the other hand, I have taken into account the modest income of the applicant and her ability to meet a substantial costs award.

[7] In all the circumstances, I think it fair to award the respondent the following sums:

- Witness expenses – \$90;
- Preparation time – \$250;
- Disbursements (copying, stationery, postage) – \$36.60.

[8] The applicant is to pay the respondent the sum of \$376.60 as a contribution to the respondent's reasonably incurred costs.

Paul Montgomery  
Member of the Employment Relations Authority