

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Cecilia Faamatuainu (Applicant)
AND Croxley Stationary Limited (Respondent)
REPRESENTATIVES Paul Pa'u, Counsel for Applicant
Paul Tremewan, Advocate for Respondent
MEMBER OF AUTHORITY Leon Robinson
SUBMISSIONS RECEIVED 9 September 2005
21 September 2005
DATE OF DETERMINATION 23 September 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] By a Determination dated 24 August 2005¹, I determined that Ms Cecelia Faamatuainu (“Ms Faamatuainu”) had a personal grievance and I made an order that Croxley Stationery Limited (“Croxley”) pay to her compensation to resolve the problem.

[2] The parties were invited to resolve costs between them but they were unable to agree. The representatives have made submissions to assist me in the exercise of the Authority’s discretion. Mr Tremewan generously takes no issue with the applicant’s submissions being out of time.

[3] Mr Pa’u advises Ms Faamatuainu’s costs are \$3,700.00. No detail is provided of those costs. He submits that she would not have incurred those costs “*but for the unreasonable attitude of her employer*” in refusing counsel’s efforts to resolve matters informally by discussion between representatives and mediation. He submits his belief that an award of costs over and above the general tariff in these matters is warranted because of the circumstances of the case and because of Croxley’s conduct during the course of the investigation meeting which he says was unduly and unnecessarily delayed “*because their evidence was constantly being revised*”. Unhelpfully, no particulars are provided of any of these submissions. A contribution of \$3,000.00 is sought.

[4] Mr Tremewan says the investigation did not involve complex legal matters and was not complicated or protracted. He says Ms Faamatuainu made confusing claims and the raft of claims initially alleged were not upheld by the Authority. He notes Ms Faamatuainu succeeded with a grievance she did not claim. He notes too that no invoices are produced to the Authority and there is no evidence of the real and actual costs allegedly incurred. He suggests that it is open to the Authority to question the veracity of the alleged costs given counsel’s connection to the applicant. He denies Croxley failed to co-operate in informal attempts to resolve the problem.

¹ AA323/05

[5] Mr Tremewan is correct that the Authority found a grievance other than that alleged at the commencement of my investigation. I agree too that Ms Faamatuainu's claims that she be reinstated and that the duty of good faith required another employee to be dismissed, were always unsound. However, those alleged claims were legal questions and did not impact on the investigation and the way in which information and evidence and was gathered and adduced.

[6] Ms Faamatuainu succeeded in a claim that she had an employment relationship problem. The Authority determined that that problem required a formal order by way of resolution. As such, Ms Faamatuainu is to be regarded as the successful party. She is entitled to an award of costs in her favour on a contribution basis.

[7] I now assess a notional quantum of reasonable costs. The investigation meeting proceeded over one day. I consider a multiplier of 1.5 should be applied to total hearing time of 7 hours to yield total professional time involved of 10.5 hours. I apply an hourly rate of \$200.00 for counsel to yield a notional sum of reasonable costs of \$2,100.00. Croxley Stationery Limited shall contribute to that sum in the amount of \$1,000.00.

[8] Exercising my discretion on a principled basis, **I order Croxley Stationery Limited to pay to Cecelia Faamatuainu the sum of \$1,000.00 as a contribution to costs.**

Leon Robinson
Member of Employment Relations Authority