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Greenwood v Vodaphone New Zealand Ltd (Auckland) [2007] NZERA 22 (29 March 2007)

Determination Number: AA 22A/07 File Number: 5041560

Under the [Employment Relations Act 2000](#)

BETWEEN Clair Greenwood
AND Vodaphone New Zealand
REPRESENTATIVES Jenni-Maree Trotman for Applicant

Penny Shaw for Respondent

MEMBER OF AUTHORITY Y S Oldfield

SUBMISSIONS 1 March, 14 March 2007

DATE OF DETERMINATION 29 March 2007

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] In a determination dated 30 January 2007 I concluded that Ms Greenwood was not constructively dismissed however I found that she had suffered a "disadvantage grievance." I noted:

"Ms Greenwood has been only marginally successful in her claim. In such circumstances it is likely that any award of costs would be low. I recommend that the parties endeavour to resolve the issue of costs between themselves however if that proves impossible the party seeking costs had a period of 28 days in which to lodge submissions on the issue."

[2] The parties have not been able to agree on the issue of costs and the applicant has requested that I determine it.

[3] Ms Trotman advises that the applicant's costs had totalled \$14,450.00 plus GST and disbursements however she discounted her fee and has charged Ms Greenwood only \$10,875.54. Ms Trotman argues that in this case, this figure equates to "reasonable costs" for a matter which ran for almost two days, with closing submissions in writing.

[4] Ms Shaw counters by saying that the applicant was only successful in relation to a small part of her claim. She says (correctly) that most of the investigation meeting focussed on Ms Greenwood's allegations of bullying which were rejected in their entirety. She also observes that the conclusion that there was a disadvantage grievance was based on a finding that there was a lack of clarity regarding the parameters and responsibilities of the applicant's role. She says that this was not specifically referenced in the pleadings. As a result, she says, the respondent has been disadvantaged in responding to the allegations against it. Although she did not specifically say so, I presume that Ms Shaw considers that this point goes to the question (relevant to costs) of the way in which the case was conducted. Ms Shaw notes that the respondent's costs were \$12,000.00 and suggests that the fairest approach is for costs to lie where they fall.

Determination

[5] I begin by addressing Ms Shaw's contention that the respondent was disadvantaged by a lack of specificity in the pleadings. It is correct that general references in the statement of problem (to stress in the workplace and to a lack of support from the respondent) were not fully supported by particulars. Indeed there was also a lack of detail about the bullying

[6] allegations. This was acknowledged by Ms Trotman in the Authority's first conference call with the representatives, and addressed by means of a timetable which required witness statements to be filed sequentially and to contain full details of all specifics which were to be relied upon.

[7] The applicant's witness statements were lodged in a timely fashion and contained evidence of where she felt there was uncertainty around her role and about how and why she felt that was causing her stress and conflict. I was satisfied that the applicant's case was clearly presented and that (well before the investigation meeting) the respondent was fully on notice of

all her concerns and the evidence which would be relied on to support her case. At no stage did the respondent make any request to call additional evidence in rebuttal, and I am not aware that it suffered additional costs from the way the case was conducted.

[8] Turning to Ms Shaw's second point however I agree that the applicant was successful in only one part of her case and that the respondent successfully defended the more serious assertions Ms Greenwood made. The respondent should not be made to contribute to costs Ms Greenwood incurred in pursuing a losing argument.

[9] Both parties have been partially successful and both have incurred costs. I have weighed in the balance the respective costs and respective levels of success of both parties. I conclude that in all the circumstances a fair contribution to Ms Greenwood's costs is \$5,000.00. I am aware that this will mean that the net result of her litigation will effectively be nil, but I am satisfied that this outcome is fair given the partial success achieved by the respondent, which will bear a total of \$17,000.00 costs and \$6,000.00 remedies.

[10] The respondent is therefore ordered to pay to Ms Greenwood the sum of \$5,000.00 as a contribution to her costs.

Y S Oldfield

Member of Employment Relations Authority

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