

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

5090742
AA 2/08

	BETWEEN	JENNY GRIFFIN Applicant
	AND	PETWORKZ ONLINE LIMITED First Respondent
	AND	ANGELA LITTLE-MORLEY Second Respondent
Member of Authority:	Vicki Campbell	
Representatives:	Simon Scott for Applicant Angela Little-Morley for First and Second Respondents	
Submissions Received	27 November from Applicant 12 November from Respondent	
Determination:	11 January 2008	

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 16 October 2007 I declined an application for Ms Griffin to raise a personal grievance out of time.

[2] In my determination I reserved the question of costs and invited the parties to resolve the matter between them. They have been unable to do so and I am now in receipt of memorandum from both parties.

[3] I have considered the submissions made by the parties and I am satisfied that the discretion under clause 15 of Schedule 2 of the Act ought to be exercised in favour of the respondents.

[4] The following principles are appropriate where the Authority is exercising its discretion in relation to costs (*PBO Ltd (formerly Rush Security Ltd) v Da Cruz*, [2005] 1 ERNZ 808):

- There is a discretion as to whether costs should be awarded and what amount;
- The discretion is to be exercised in accordance with principle;
- The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority;
- Equity and good conscience is to be considered on a case by case basis;
- Costs are not to be used as a punishment or as an expression of disapproval of an unsuccessful party's conduct although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award;
- It is open to the Authority to consider whether all or any of the parties costs were unnecessary or unreasonable;

- That costs generally follow the event;
- That without prejudice offers can be taken into account;
- That awards will be modest;
- That frequently costs are judged against a notional daily rate;
- The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[5] The First Respondent claims it has incurred actual costs of \$4,809.38 including GST for a hearing which lasted less than half a day. The First Respondent seeks a contribution to those costs.

[6] The First Respondent has provided two invoices to support its application for costs. One invoice from Friedlander & Co, dated 19 October 2007 in the amount of \$2,700 and the other from a company called F.S. Consulting Ltd dated 29 October 2007, in the amount of \$2,109.38. Both invoices are made out to Petworkz Online Ltd.

[7] Ms Little-Morley is the sole director of both Petworkz Online Ltd and F.S. Consulting Ltd. Mr Scott, in his submissions on behalf of the applicant raises concerns as to the authenticity of the invoice from F.S. Consulting Ltd. For that reason a conference call was arranged and the invoice from F.S. Consulting Ltd discussed.

[8] The invoice from F.S. Consulting Ltd covers Ms Little-Morley's attendance at the investigation meeting, as a representative of Petworkz Online Ltd and assistance with review of Ms Griffin's claims. It is noted that Mr Friedlander's invoice also covers assistance for Petworkz Online Ltd, with the initial stages of Ms Griffin's claims including undertaking legal research and attendances with the Authority on the directions conference call.

[9] The matter was not complex and the costs incurred are more than I would expect given the preparation required and the length of the hearing, which took less than half a day.

[10] Ms Griffin is required to pay to Petworkz Online Limited the amount of \$250.00 which includes disbursements, as a reasonable contribution to costs.

[11] An order is made accordingly.

Vicki Campbell
Member of Employment Relations Authority