

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Glenys Maree Hann (Applicant)  
**AND** Silbury Home Limited (Respondent)  
**REPRESENTATIVES** Michael Kirkland, Counsel for Applicant  
Adam D M Gallagher, Counsel for Respondent  
**MEMBER OF AUTHORITY** Paul Montgomery  
**SUBMISSIONS RECEIVED** 5 December 2005  
13 December 2005  
**DATE OF DETERMINATION** 9 May 2006

**COSTS DETERMINATION OF THE AUTHORITY**

*The application for costs*

[1] In my determination of the substantive issue I encouraged the parties to attempt to resolve the matter of costs. Despite genuine efforts, they have been unable to do so.

[2] Counsel for each party has lodged submissions and I have considered the issues raised.

[3] For the respondent, Mr Gallagher seeks a contribution of \$7,000 towards his client's reasonably incurred costs which he confirms to be \$12,262.50 (GST inclusive). Mr Gallagher refers the Authority to *Reid v. NZ Fire Commission & Ors* [1995] 2 ERNZ 38 and to *Ogilvie v. Computer Associates (New Zealand) Ltd* [1994] 1 ERNZ 613 and also to *Aoraki Corporation Ltd v. McGavin* [1998] ERNZ 601; [1998] 3 NZLR 276. Finally, he refers the Authority to the decision by the Court of Appeal in *Binnie v. Pacific Health Ltd* [2002] 1 ERNZ 438.

[4] These cases are helpful in that they set out the general principles regarding the Authority's discretion to award costs. There is however, a more recent decision of the Full Employment Court in *PBO Ltd v. Da Cruz* AC 2A/05 which is now considered the leading case on costs determination by the Authority.

[5] Mr Gallagher also referred the Authority to the *Calderbank* offer made to the applicant in his letter of 17 November 2004. In a letter dated 23 November 2004 Mr Kirkland, on behalf of his client, proposed an alternative settlement arrangement by realigning the allocation of the quantum proposed by Mr Gallagher. That counter-proposal was clearly unpalatable to the respondent and the matter proceeded to investigation.

[6] Mr Kirkland submits that his applicant's claim was not malicious and I have no difficulty in accepting that submission. I also accept Mr Kirkland's submission that Ms Hann is not a woman of

any wealth. The Authority must also however, consider her reluctance to settle on terms offered by the respondent. An applicant is perfectly entitled to consider an offer of settlement and then reject it, but must bear in mind the risk of incurring further costs should the matter proceed to investigation.

[7] Mr Kirkland urges me to award costs to the respondent in the sum of \$500 plus disbursements incurred by the respondent.

### ***Discussion***

[8] The Authority's investigation of this matter was dealt with in a five hour investigation meeting. No complex legal or factual issues were involved.

[9] Mr Gallagher has provided the Authority with a ledger entry outlining the costs billed to the respondent and they are, in my view, reasonable and proper in the context of this case.

[10] I can see no reason in this particular case to depart from the rules that costs should follow the event. In *Da Cruz*, the Full Court pointed out that because of the informal and inquisitorial nature of the Authority's proceedings, costs awards have generally been more modest than has been the case in the more adversarial setting of a Court. The Authority has frequently awarded costs on a notional daily rate and that rate at present lies in the range of \$2,000 to \$2,500.

[11] In coming to my determination on this matter, I have taken the higher figure of \$2,500 in consideration of the genuine attempt by the respondent to resolve this matter at an early stage, have divided that sum by seven hours which is the average sitting time for an Authority investigation, and multiplied the resultant figure by five hours.

[12] I also think it appropriate to recompense the respondent for disbursements incurred on its behalf.

### ***Determination***

[13] I direct that Ms Hann contributes the sum of \$1,800 to the reasonably incurred costs of the respondent. In addition, I direct Ms Hann to pay the respondent the sum of \$119.35 in respect of disbursements.

[14] I am mindful of Mr Kirkland's advice to the Authority that his account for services to the applicant is being met on a time payment basis. It seems likely that the respondent will need to consider a similar approach in a costs setting.

Paul Montgomery  
Member of Employment Relations Authority