

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Karen Haste (Applicant)  
**AND** Midcity Childcare Centre Limited (Respondent)  
**REPRESENTATIVES** Rose Alchin, Counsel for Applicant  
Mark Hammond, Counsel for Respondent  
**MEMBER OF AUTHORITY** Janet Scott  
**INVESTIGATION MEETING** 14 October 2004  
**DATE OF DETERMINATION** 4 February 2005

**COSTS DETERMINATION OF THE AUTHORITY**

The applicant brought a personal grievance claim alleging constructive dismissal. The applicant was successful in her claim but her contribution was set at 100% and no remedies were awarded.

Both parties seek costs in the matter – the applicant seeks \$2,500 and the respondent seeks \$5,500 which it is claimed is 2/3 of the actual costs incurred by the respondent in defending this matter.

The power to award costs is contained in the Second Schedule of the Employment Relations Act 2000. The general principles to be applied in cost applications are set out, in case law including *NZALPA v Registrar of Unions* (1989) NZILR,550, *Okeby v Computer Associates (NZ) Limited* [1994] 1 ERNZ 613 and *Reid v New Zealand Fire Service Commission* [1995] 2 ERNZ 38. The criteria to be taken into account include the importance of the case to the parties, the way the case was conducted, the conduct of the parties at the hearing, the amount of time required for effective preparation over and above that which would ordinarily be inferred, whether arguments lacking in substance were advanced or whether unduly legalistic and technical points were taken and the actual costs incurred.

**Determination**

This was a case where there were no winners and I have said all there is to say in my substantive decision. It is a great pity that the matter was not resolved between the parties having regard to all the circumstances of the case before legal costs had to be incurred.

In all the circumstances of this case I direct that it is only reasonable that costs lie where they fall.

Janet Scott  
Member of Employment Relations Authority