

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2011] NZERA Christchurch 149  
5293803

BETWEEN TRACY HILL  
Applicant  
AND TURNERS & GROWERS LIMITED  
Respondent

Member of Authority: James Crichton  
Representatives: Georgina Burness, Advocate for Applicant  
Penny Swarbrick, Counsel for Respondent  
Submissions Received: 29 September 2011 from Applicant  
25 August 2011 from Respondent  
Date of Determination: 6 October 2011

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**COSTS DETERMINATION OF THE AUTHORITY**

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**The substantive determination**

[1] In the determination of this matter issued by the Authority on 29 July 2011, the respondent employer (Turners & Growers) was completely successful in their defence of the applicant's (Ms Hill) personal grievance.

[2] Costs were reserved.

**The application for costs**

[3] Turners & Growers, as the entirely successful party seek a contribution to the costs it incurred in defending the claim, of \$6,000 (excluding GST) together with an amount of \$125 in disbursements.

[4] No submissions have been filed in the Authority by Ms Hill's advocate. All the Authority has been provided with is a forwarded email, sent through Ms Hill's

advocate, from Ms Hill herself. The email is so short that it can appropriately be recited in full, as it was written, in so far as it is relevant:

*... have read the summary of costs (presumably a reference to the costs memorandum filed by Turners & Growers) and have noway of paying them, i have just gone on too a benefit i get 356 dollars a week 200 of that is for rent and have car payments of 206 a fortnight and have too feed 2 children, so let them do the math's can't get blood from a stone.*

### **The claim for costs**

[5] In its memorandum on costs, Turners & Growers refer to the relevant case law and to the principles which usually guide the application of costs in the Authority. Amongst other things, Turners & Growers understandably identify the fundamental principle that costs usually follow the event and thus, in the present case, Turners & Growers, as the successful party, ought to be entitled to receive a contribution to its reasonably incurred costs.

[6] The Authority is told in the Turners & Growers' submission that the respondent employer incurred legal costs in excess of \$12,000 plus GST and disbursements and Turners & Growers contend that that amount is higher than it might otherwise have been because of the discursive approach taken by Ms Hill and her raising of irrelevant issues.

[7] I accept that the costs incurred by Turners & Growers were reasonable in all the circumstances of the present case. It is a fact that in mounting her personal grievance, Ms Hill chose to advance her claim by raising issues which were not relevant to the purported personal grievance. Of necessity, Turners & Growers had to respond to those matters, notwithstanding their irrelevance. Two briefs of evidence were filed for Ms Hill from witnesses whose testimony was absolutely irrelevant to the matters in contention and Ms Hill's own brief (such as it was) was I accept "irrelevancy riddled". Of even more import in terms of the time taken to prepare their response was, I fancy, Ms Hill's dogged persistence with a claim that her position at Turners & Growers was something other than what it plainly was. The issue of what Ms Hill was employed as, was completely irrelevant to whether she had suffered a personal grievance or not, but of course, Turners & Growers had to deal with that contention because it seemed to dominate Ms Hill's own assessment of her position.

[8] Of course, the Authority retains a discretion in respect to costs fixing. Equity and good conscience requires the Authority to properly consider not just the legitimate expectations of the successful party but also to consider the circumstances and position of the unsuccessful party. In that regard, the Authority has little on which to rely in the absence of any proper submissions from the advocate for Ms Hill. As I have already made clear, the only information available about the circumstances of Ms Hill herself comes from the email that she sent to her advocate and which the latter forwarded on to the Authority without embellishment. The financial circumstances of a party are a relevant consideration in the costs arena. On the face of it, Ms Hill is impecunious. The imposition of any costs award against her would place further financial stress on her and impact on her ability to care for her children.

[9] Costs awards ought not to be a punishment for having failed in a litigation matter but equally, parties need to be aware that in mounting a claim, which is unsuccessful, there are consequences which may sound in costs. This particular case for the applicant was not well prepared, was not well argued, and, looked at in the round, had no viable chance of succeeding. However, having raised the two personal grievances, Turners & Growers were put to proof to defend their position and they did so entirely successfully. As a consequence, Turners & Growers have sustained a cost to their business which would have been entirely unnecessary if the claims advanced by Ms Hill had not been progressed.

### **Determination**

[10] Although the Authority has grave reservations about encouraging the bringing of spurious grievances by failing to make proper costs awards, this is a case where it seems likely that any costs award made against Ms Hill would be entirely pyrrhic because it appears she would have absolutely no ability to pay and any contribution, even at modest levels, would, or could, impact on her obligations to care for her children.

[11] In those circumstances, the Authority has decided that equity and good conscience demands that no cost award be made in the present case because of the financial circumstances of the applicant Ms Hill but this decision ought not to be read

as a general licence for applicants with no viable claim to bring applications to the Authority without the consequences of failure sounding in costs.

James Crichton  
Member of the Employment Relations Authority