

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Stacey Hogan (Applicant)  
**AND** Graham & Keys Limited (Respondent)  
**REPRESENTATIVES** Brett Vautier for Applicant  
Jerry Noble for Respondent  
**MEMBER OF AUTHORITY** Vicki Campbell  
**SUBMISSIONS RECEIVED** 20 October 2006 from Respondent  
6 November 2006 from Applicant  
**DATE OF DETERMINATION** 8 November 2006

**DETERMINATION OF THE AUTHORITY ON COSTS**

[1] In my determination dated 21 September 2006 I found that Mr Hogan was not in an employment relationship with Graham & Keys Limited. I reserved the question of costs. I am in receipt of an application for costs from Mr Noble on behalf of the respondent.

[2] There is nothing in this case to derogate from the principle that costs follow the event and that the successful respondent should receive a contribution to its reasonably incurred costs.

[3] 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.

[4] It was said in *Harwood v Next Homes Limited* [2003] 2 ERNZ 433, that average awards of costs fall between \$1,000 and \$1,500 for a one-day investigation meeting by the Authority. There was also agreement in those decisions of a recent trend towards a higher figure of between \$2,000 and \$3,000.

[5] The hearing took one day and was not a complex matter. I have considered Mr Noble's submissions made on the respondent's behalf and I am satisfied that the discretion under clause 15 of Schedule 2 of the Act ought to be exercised in favour of Graham and Keys Limited. I have also taken into consideration the submissions made on behalf of Mr Hogan.

[6] Mr Hogan is required to pay to Graham and Keys Limited the sum of \$3,000.00 as a reasonable contribution to costs given the subject of the investigation and the duration of the investigation meeting.

[7] An order is made accordingly.

Vicki Campbell  
Member of Employment Relations Authority