

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2012] NZERA Wellington 60
5314814

BETWEEN KIM HONEYFIELD
 Applicant

AND REID HOLDINGS LIMITED
 Respondent

Member of Authority: G J Wood

Representatives: Ian Matheson for the Applicant
 Alison Maelzer for the Respondent

Submissions Received: By 8 March 2012

Determination: 31 May 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] This costs determination relates to two prior determinations of the Authority. The first involved the dismissal of Ms Honeyfield's claims for unjustifiable disadvantage and dismissal as well as penalties for breach of contract, in reliance on a settlement agreement entered into between the parties following Ms Honeyfield's dismissal by the respondent (Reid). The second determination related to other claims by Ms Honeyfield. Her claim for damages in relation to the reasons given by Reid to its staff for the termination of Ms Honeyfield's employment was dismissed. She also sought a penalty for breach of the settlement agreement, which was also dismissed. Ms Honeyfield was, however, successful in claims for a penalty for the principal of Reid (Ms Barbara Olsen-Henderson) publishing an article in a trade magazine with information that was in breach of the settlement agreement and compliance orders for two breaches of the Authority's non publication order, as a result of the trade magazine publication and for disclosing a witness statement to a third party. The penalty awarded of \$1,000 was to be paid to Ms Honeyfield. Reid was also ordered

not to publish any claims or evidence in any way related to the reasons allegedly given to staff by Ms Olsen-Henderson after Ms Honeyfield's dismissal.

[2] Any actions Ms Honeyfield may wish to take over any alleged contempt of the Authority through any actions of Ms Olsen-Henderson were reserved for later disposition. There have been no such applications related to this issue. It is therefore appropriate to determine costs. Both parties have sought costs against the other.

[3] On behalf of Ms Honeyfield, Mr Matheson seeks a contribution of between 60% and 70% of Ms Honeyfield's relevant costs of \$22,537. It was submitted that the matter in effect took two days to investigate (given that there were two hearings and various interlocutory matters in between) and that proceedings had escalated out of all proportion through no fault of the applicant. He further submitted that Ms Olsen-Henderson acted in such a way as to deliberately denigrate and cause harm to Ms Honeyfield, even when in breach of non-publication orders made by the Authority, and that Reid introduced numerous irrelevant witness statements on the morning of the first hearing (including some attacking Ms Honeyfield's character), resulting in the substantive investigation meeting being rescheduled. It was also submitted that it was necessary for the protection of Ms Honeyfield's reputation to continue with the proceedings.

[4] On behalf of Reid, Ms Maelzer submitted that the Authority should award it a substantial proportion of Reid's actual costs, being \$37,767.74, plus \$513.52 in disbursements. Disbursements relate to flights, mileage and parking costs for out of town counsel. I note that out of town counsel was not required in a case like this, so therefore that aspect of the claim must be dismissed.

[5] It was submitted that as the case for the respondent was entirely successful over the claims for personal grievance and penalties in the first determination it is entitled to costs. It was then submitted that the second investigation meeting related to a claim for an implied term of fair dealing surviving termination of employment, which was also dismissed. It was also noted that one penalty claim was dismissed as being out of time. It was further noted that Ms Honeyfield's representative filed six versions of the statement of problem, all of which needed to be considered and dealt with by Reid and the Authority and that the Authority had indicated that the claim for breach of the settlement agreement was *only belatedly put in the statement of problem*.

[6] Ms Maelzer was also concerned that Ms Honeyfield's representative filed wide ranging new submissions after the end of the investigation (none of which involved any New Zealand precedent), putting Reid to additional costs of about \$10,000,. Ms Maelzer also noted that Ms Honeyfield seeks to recoup \$3,000 for mediation and previous advice which should not be considered by the Authority. Finally, it was noted that the Authority had held *there is no evidence that any of these matters* [about Ms Honeyfield's reputation] *has caused any damage to Ms Honeyfield's reputation and indeed no reason to think that they had.*

[7] In response, Mr Matheson submitted that given that Reid had had three representatives there is no doubt that there was duplication in the work undertaken. He also reiterated that the matter would have been dealt with in one day had Reid not provided inflammatory witness statements on the day, which Ms Honeyfield had to be granted time to respond to. He also noted that Ms Honeyfield's statement of problem had to be updated because of the behaviour of Ms Olsen Henderson, particularly as they were in breach of the settlement agreement and the non-publication order.

[8] Mr Matheson also noted that Ms Honeyfield took great relief from the Authority's determination that Ms Olsen Henderson had misrepresented the reasons for her dismissal and 17 other staff at a staff meeting.

Determination

[9] In the ordinary course of events, Reid could expect to obtain an award of a reasonable contribution towards its costs, because it was greatly successful in defending the claims of Ms Honeyfield. This was because Reid was entitled to rely on the settlement agreement, which did preclude Ms Honeyfield from bringing her personal grievance claims.

[10] However, the actions of Reid through Ms Olsen-Henderson were such that Ms Honeyfield had no option but to continue with proceedings in the Authority, because Ms Olsen-Henderson did not uphold the terms of settlement Reid had agreed to - hence the penalty. Of even more concern, Ms Olsen-Henderson did not adhere to the terms of the Authority's non publication order.

[11] Given the great degree of success of each party, I conclude that costs will lie where they fall, as each party's success in effect cancelled out the other.

[12] I order accordingly.

G J Wood
Member of the Employment Relations Authority