

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 62A/08
5096151

BETWEEN WHITI KAINUKU
 Applicant

AND GARY FERGUSON TRADING
 AS MAN ABOUT THE
 HOUSE
 Respondent

Member of Authority: Vicki Campbell

Representatives: Graeme Ogilvie for Applicant
 Gary Ferguson for Respondent

Submissions Received: 30 May 2008 from Applicant
 15 July 2008 Respondent

Determination: 25 September 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 9 May 2008 I found that Mr Kainuku had been unjustifiably dismissed from his employment with Gary Ferguson trading as Man About the House. However, I also found that Mr Kainuku's conduct was such that he was precluded from receiving any remedies except for a contribution to his costs.

[2] I reserved the question of costs and invited the parties to resolve the matter between them. They have been unable to do so and I am now in receipt of memorandum from the parties.

[3] I have considered the submissions made by the Respondent and I am satisfied that the discretion under clause 15 of Schedule 2 of the Act ought to be exercised in favour of Mr Kainuku.

[4] 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.

[5] Mr Kainuku incurred costs of \$1,870 including disbursements for a hearing which lasted one day. The Applicant seeks full costs.

[6] The matter was not complex and I find the costs incurred by the Applicant are very reasonable given the preparation required and the length of the hearing. However, it is relevant that I heard two matters with two separate applicants but against the same respondent in the same day. I have therefore taken that into account in making my orders in the matter.

Gary Ferguson trading as Man About the House is ordered to pay to Mr Kainuku the sum of \$750.00 plus \$70 disbursements.

Vicki Campbell
Member of Employment Relations Authority