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Kapiti Coast Diesel Services Limited v Goodwin [2011] NZERA 52; [2011] NZERA Wellington 9 (27 January 2011)

Last Updated: 21 February 2011

IN THE EMPLOYMENT WELLINGTON

RELATIONS

AUTHORITY

[2011] NZERA Wellington 9 5307405

BETWEEN

AND

KAPITI COAST DIESEL
SERVICES LTD
Applicant

ANNE DENISE GOODWIN Respondent

Member of Authority: G J Wood

Representatives: Grant Pearson for the Applicant

Sharon France for the Respondent

Submissions Received: By 18 January 2011

Determination: 27 January 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In my substantive determination I found in favour of the claim of the applicant (Kapiti Coast Diesel) that the respondent, Ms Goodwin, pay to it over four hundred thousand dollars in unauthorised transfers made to herself, plus interest and a penalty.

[2] In my determination I accepted that the unauthorised payments were deliberate, serious and sustained and indeed were at the highest level in terms of amount and degree of breach of trust the duty of good faith envisages.

[3] On behalf of Kapiti Coast Diesel Mr Pearson sought indemnity costs even although Ms Goodwin was in receipt of legal aid, of \$6,470.91, including disbursements of \$22.86. He did so on the basis that Ms Goodwin had elected to put Kapiti Coast Diesel to the expense of preparing the evidence and then later simply accepted it without question, when Ms Goodwin was on notice that a claim for indemnity costs would be sought. Mr Pearson also sought an unspecified level of costs for work undertaken before putting Ms Goodwin on notice for indemnity costs. There were no details of this claim provided.

[4] On behalf of Ms Goodwin Ms France noted that Ms Goodwin was legally aided, that her assets did not satisfy the level of misappropriation and that it was reasonable for Kapiti Coast Diesel to produce its evidence in order to prove its case. Ms France submitted that Ms Goodwin did not contest the claim and is facing a custodial sentence following her guilty plea. It was therefore submitted that costs should lie where they fall.

[5] In response Mr Pearson noted that Ms Goodwin has always been aware that she had misappropriated money and that costs can be awarded against a legally aided person in exceptional circumstances. Mr Pearson also questioned the granting of legal aid in the first place, but that is not a matter for the Employment Relations Authority, as it has no jurisdiction over such decisions.

[6] In the absence of evidence of costs and expenses which can be awarded by the Authority, no award may be made for work other than that calculated at \$6,470.91.

[7] I accept that there are exceptional circumstances in this case that permit the Authority to make an award of costs against a legally aided person. As noted above, Ms Goodwin knew throughout that she had taken the money from Kapiti Coast Diesel and therefore put it to unnecessary costs in not accepting the claim from the outset.

[8] I also consider that this is one of those rare cases where indemnity costs, rather than a contribution to a party's costs, should apply. Again as noted above, Ms Goodwin put Kapiti Coast Diesel to substantial cost to prove its claim, when she knew throughout that it was valid and had already admitted to Kapiti Coast Diesel's principals that she had taken the money off of them. It is therefore appropriate that Ms Goodwin pay Kapiti Coast Diesel's costs in full for their solicitors preparing evidence for the Authority.

Determination

[9] I therefore order the respondent, Anne Denise Goodwin, to pay to the applicant, Kapiti Coast Diesel Services Ltd, the sum of \$6,470.91 in costs and disbursements.

G J Wood

Member of the Employment Relations Authority

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