Determination Number: AA65/06
File Number: AEA 145/05

Under the Employment Relations Act 2000

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE

BETWEEN	Catherine Kennedy (Applicant)
AND	Air New Zealand Limited (Respondent)
REPRESENTATIVES	Helen Thorpe, Advocate for Applicant Peter Kiely, Counsel for Respondent
MEMBER OF AUTHORITY	Alastair Dumbleton
COSTS SUBMISSIONS RECEIVED	21 October 2005 and 6 March 2006
DATE OF DETERMINATION	7 March 2006

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] In its Determination dated 20 September 2005 issued under AA 370/05, the Authority held that the respondent Air New Zealand Ltd (Air NZ) had no legal responsibility for the resignation of the applicant Ms Kennedy or for the events occurring in the workplace that had lead her to resign her employment. Ms Kennedy's claims against Air NZ of constructive dismissal, unjustified action and breach of workplace safety, were dismissed by the Authority.

[2] Now for determination is the question of costs which remains unresolved between the parties. Counsel for Air NZ submits in reliance on principle that for the one day investigation an award of $7,500 costs plus $77 expenses will amount to a reasonable contribution to actual costs of $12,712 incurred by the company. Counsel for Ms Kennedy submits that any award should be no greater than $500.

[3] To award $500 in the circumstances would be to trifle with the issue. While I think that Ms Kennedy genuinely felt that she was being bullied out of her employment by another employee, I have found there was no reasonable basis for feeling that way and that by resigning she chose not to accept the constructive proposals of her employer for change to address the conflict complained of by her.

[4] After having the immense benefit of mediation Ms Kennedy decided to have Air NZ subjected to an investigation by the Authority. The outcome of that investigation has to be properly reflected in the level of costs Ms Kennedy should contribute to Air NZ for putting it to legal expense.

[5] Rather than focussing on the costs principles appropriately to be applied by the Authority, the submissions for Ms Kennedy tend to be a rehearsal of the merits of the employment relationship problem, which is something that has already been determined by the Authority. Recently the

Employment Court has reviewed and approved of the principles that the Authority has developed and applied since 2000 in relation to costs awards. Those principles are set out in paragraph [44] of the Full Court's judgment in *PBO Ltd v Da Cruz* unreported, 9 December 2006, AC 2A/05.

[6] In having regard to those principles there are several I find to be of particular importance in this case; the need for equity and good conscience to be applied by the Authority, the relative modesty of awards in this special investigative jurisdiction and the desirability for reasonable consistency in awards made by the Authority. In this last respect the Court has acknowledged that a notional daily rate may properly be recognised in fixing costs; see *Da Cruz* (above).

[7] The investigation was considerably aided by the careful attention paid to detail and to presentation, written and oral, by the Air NZ witnesses. This degree of preparation takes additional time and should be reflected to some extent in costs. I consider that an award of $7500 as sought by Air NZ would significantly exceed a reasonable contribution to costs. I note that no submission has been made that Ms Kennedy would be unable to meet a costs award above the $500 she offered to pay.

[8] I award Air NZ a total of $3,000. While that is above the notional tariff in the Authority it is an equitable amount in the circumstances and modest in relation to the total cost incurred by the airline. The order for costs against Ms Kennedy is made under clause 15 of Schedule 2 of the Employment Relations Act 2000.

A Dumbleton
Member of Employment Relations Authority