

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

Determination Number:
WA 58/08
File Number:5052788

BETWEEN UPOKOINA KINNEY
Applicant

AND SECURITY FIRST
HOLDINGS LIMITED
Respondent

Member of Authority: G J Wood

Representatives: John Gwilliam for Applicant
Mark Gazley for Respondent

Submissions received: By 6 May 2008

Determination: 7 May 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] In my substantive determination, I concluded that Ms Kinney had not been constructively dismissed, nor was she provided with an unsafe workplace because of long hours or a hostile or abusive environment. I did, however, conclude that Ms Kinney was unjustifiably disadvantaged in her employment because her pay was stopped unilaterally during the period of her suspension and awarded her \$910 gross in lost remuneration.

[2] Although my determination was issued on 7 August 2007, it was not until 18 April 2008 that Mr Gwilliam sought costs on Ms Kinney's behalf. Ms Kinney was legally aided.

[3] Mr Gwilliam noted that Mr Wayne Gazley, Managing Director of the respondent, Security First, had failed to provide Ms Kinney with a copy of the videotape of the key meeting between the parties, or copies of its witness statements, which the Authority had to provide to Ms Kinney. It was also submitted that Security First attempted to delay proceedings by unsuccessfully seeking an

adjournment before the investigation meeting. Finally, Mr Gwilliam submitted that Ms Kinney should be awarded costs in the sum of \$2,000 on the part of the claim on which she was successful, even although she was not successful in the major part of her claim.

[4] Dr Gazley noted that Ms Kinney was unsuccessful with most of her claims and that she only succeed on only one *minor* point. He therefore submitted that it would be appropriate for the respondent to obtain costs. Dr Gazley noted that his brother, Mr Wayne Gazley, was not a lawyer and did not realise he had to serve his statements on Ms Kinney. He also noted that no details of any costs incurred were provided.

[5] In response, Mr Gwilliam noted that the applicant was on legal aid and therefore costs could not be awarded against her, other than in exceptional circumstances.

[6] No reason has been given for the delay in filing for costs. There is no reason to conclude that this was a failure on Ms Kinney's behalf and therefore I am prepared to consider the costs issue. Ms Kinney and Mr Gwilliam should be on notice that in the future such delays will not be countenanced. Absence of a timetable for costs is not an invitation for delay.

[7] There will be no order for disbursements as the medical records related to a part of the Authority's determination that did not favour Ms Kinney.

[8] Ms Kinney failed in the major part of her claim, but was successful in getting recompense for having her pay unfairly stopped during the period of her suspension. Given Security First's success in the major parts of the claim, which took the vast majority of the investigation meeting time, it would ordinarily be appropriate that costs lie where they fall. On the other hand, Ms Kinney should not have had to attend an investigation meeting to be paid during the period of suspension, especially after her pay was apparently cut off as retribution for her seeking legal advice. I also accept that Security First unreasonably failed to provide Ms Kinney with a copy of the videotape of the key meeting.

[9] Weighing these factors, I find that an award of \$500 in Ms Kinney's favour is appropriate. I therefore order the respondent, Security First Holdings Limited, to pay to the applicant, Upokoina Kinney, the sum of \$500 in costs.