

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Jessica Laffey (applicant)

AND Trust House Limited (respondent)

REPRESENTATIVES Submissions were received from Harry Baynes and the applicant herself.
Katrina Leather for the respondent.

MEMBER OF AUTHORITY Denis Asher

SUBMISSIONS RECEIVED 3 July and 10, 14 & 22 August 2006

DATE OF DETERMINATION 31 August 2006

COSTS DETERMINATION OF AUTHORITY

Employment Relationship Problem

1. In my substantive determination dated 8 June 2006 (WA 89/06) I found in favour of the applicant's claim that Trust House Limited had unjustifiably dismissed her.
2. Costs were reserved. The parties subsequently advised they were unable to reach agreement on this matter and request a determination by the Authority.

Applicant's Position

3. In a submission received on 3 July and 8 August, Ms Laffey's advocate, Mr Harry Baynes, advised his client's total legal expenses amounted to \$5,966. I note here that some of the costs included in that amount related to mediation. No argument is provided as to what would amount to a reasonable contribution to Ms Laffey's actual costs.
4. Ms Laffey says the costs figure provided at the investigation on 4 May failed to take account of her advocate's actual costs for attending the two-day investigation: the original figure was therefore only stated as an estimate.
5. Ms Laffey says she has been penalised already for contributory fault and it should have no bearing on her costs claim.

Respondent's Position

6. In a submission received on 14 August, the Company's Human Resources Manager, Ms Katrina Leather, sets out the respondent's position. It takes issue with apparent significant changes in advice on the applicant's behalf, at different times, as to the amount of her costs: the respondent describes an apparent disparity of \$3,666 as "*inexplicable*".
7. The Company refers to the Authority's finding of contributory fault and – I find – attempts to relitigate the original proceedings by claiming were it not for that contribution, "*the dismissal would not have been made and neither party would have incurred legal fees. The respondent did not act to dismiss without cause.*" I do not accept that submission: as the substantive determination makes clear, the respondent unjustifiably dismissed the applicant notwithstanding her contributory fault.
8. The Company describes its costs as all the more significant because of its status as a charitable trust that is required to distribute its funds back into the community. It says Ms Laffey's actions unnecessarily increased its legal costs by deferring the original hearing at one-day's notice, revising her submissions after the deferral and breaches

by Ms Laffey of mediation confidentiality the required redrafting of an affidavit and further legal costs.

9. The Company rejects Ms Laffey's claim that allowing costs to lie where they fall would significantly reduce the benefit of the compensation awarded to her as a contribution to legal fees is for the purpose of addressing actual and reasonable costs and not providing additional compensation.
10. Costs should therefore lie where they fall.

Costs Decision

11. I see no reason in this case to depart from the well-established principle that costs should follow the event: *Harwood v Next Homes Ltd*, unreported, 19 December 2003, Travis J, AC 70/03. I do not accept that because of its charitable trust status and the costs it has incurred to date that the respondent should be exempted from this basic principle. The adjournment of the original investigation was legitimate and unavoidable resulting as it did from Mr Baynes' genuine illness. The risks and the financial implications of an adverse decision were discussed openly and extensively with the parties both before and during the investigation. Costs are not applied so as to punish an unsuccessful party, or in this instance to continue to apply the contributory fault finding against the applicant, but to contribute reasonably to the costs incurred by a successful party. While Ms Laffey contributed significantly to her unjustified dismissal, the reality remains that the responsibility for getting her termination wrong ultimately rests with the respondent. Ms Laffey is therefore entitled to recover a contribution to her reasonable costs.
12. I reach these conclusions having regard to *Harwood* (above) and also to the principles set out in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808. In particular, I note the Court's observation at par 47 that, "*representatives of parties (are urged) to be conscious of the costs that are accumulating as a matter proceeds. Cases should be approach economically and in a way that is likely to leave a successful party with a satisfactory outcome. There is an overall need to ensure that costs being incurred are reasonable in light of the amount that is likely to be recovered as remedies and costs from the Authority.*"

13. While Mr Baynes' account is not particularised, and it is not clear what costs were incurred by him representing the applicant during mediation proceedings, it is plainly apparent that, given the nature of the employment relationship problem, considerable work was required by him in preparing for, and advocating, his client's case. But, given the applicant's contributory fault, I am satisfied this is not an occasion to find that Ms Laffey is entitled to recover her mediation costs. However, while discounting for her mediation costs in an approximate manner, and consistent with well-established case law, and bearing in mind the modest fees charged by the applicant's advocate, I see no reason to depart from the indication I gave to the parties during the investigation as to their costs risk. Having regard to the above and the two-day duration of what was a particularly demanding investigation, I am satisfied that the respondent should pay to the applicant, as a contribution to its costs, the figure of \$5,000.

Decision

14. As is made clear above, I am satisfied that the respondent, Trust House Limited, should pay to the applicant, Jessica Laffey, as a contribution to her fair and reasonable costs, the sum of \$5,000.00 (five thousand dollars).

Denis Asher

Member of Employment Relations Authority