

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 82A/07
5071645

BETWEEN

MELANIE LAPTHORN
Applicant

AND

KATHRYN THERESE HAYES
Respondent

Member of Authority: James Crichton

Representatives: Phil James, Counsel for Applicant
Owen Paulsen, Counsel for Respondent

Submissions received: 6 August 2007 from Applicant
20 August 2007 from Respondent

Determination: 19 September 2007

COSTS DETERMINATION OF THE AUTHORITY

The application for costs

[1] By determination dated 25 July, the Authority disposed of the employment relationship problem between these parties by rejecting a claim for a personal grievance by reason of an unjustified action causing disadvantage, accepting a claim for an unjustifiable dismissal by way of constructive dismissal and then making orders in respect to compensation and lost wages which set the contribution level of Ms Laphorn at the very high figure of 75%.

[2] Costs were reserved.

The claim for costs

[3] Ms Laphorn seeks what amounts to full indemnity costs plus some reasonably extensive disbursements but, as Ms Hayes is quick to point out in her submissions, Ms Laphorn does not provide supporting documentation to demonstrate the costs that she has actually incurred.

[4] Ms Hayes conversely suggests that the costs should lie where they fall on the footing that although Ms Laphorn was successful under one of the heads of claim, she could hardly claim to have received a ringing endorsement by reason of the decision.

[5] Furthermore, Ms Hayes makes the point that her costs actually exceed those of Ms Laphorn (and by a reasonably significant margin) and she indicates that this is a function of the fact that she was put to additional expense in defending claims referred to in the statement of problem but which for various reasons were not persevered with by Ms Laphorn during the course of the investigation meeting proper.

The legal principles

[6] The full Court in *PDO Limited v. D a Cruz* AC 2A/5 identifies the salient principles and confirms that the principles traditionally used by the Authority in determining costs awards are appropriate and also approves the *tariff based approach* often adopted by the Authority as long as the particular circumstances of the individual case is taken into account as well.

Discussion

[7] Ms Laphorn relies on her apparent success in the substantive proceedings to invoke the principle that costs should follow the event. Ms Hayes accuses MsLaphorn of rather *gilding the lily* in her claim for full indemnity costs given the limited extent to which Ms Laphorn was successful. I must say that I agree with that submission. While Ms Laphorn was able to demonstrate success under one of the heads of personal grievance under which she claimed, there were a large number of other heads on which she was unsuccessful.

[8] In addition, Ms Hayes urges on me the proposition that because Ms Laphorn had such a high award of contribution factored into her awards, it would not be appropriate for her to receive full indemnity costs.

[9] I do not think this is a case where full indemnity costs are appropriate. There are no particular circumstances that would justify full indemnity costs. I do not accept Ms Laphorn's argument that Ms Hayes refused mediation and therefore costs were of necessity ratcheted up. Indeed, I think Ms Laphorn can be very appreciative of the professional services that she has received for the costs she has incurred as I consider that the total legal costs she has sustained are very modest indeed for a matter of this kind.

[10] Nor do I consider that this is a matter where costs should lie where they fall as Ms Hayes urges on me. This was in the end an ordinary grievance where Ms Laphorn was successful under one head, albeit with very modest awards. However, the element of contribution in the awards made in Ms Laphorn's favour ought not, in my view, to be factored into the costs setting as well. The only proper basis on which costs, properly incurred, ought to be rebated in those circumstances is where it can be truthfully alleged that an unsuccessful party has, by the way they have conducted their case, forced the other party to incur unnecessary additional costs.

[11] Ms Hayes argues that that is the position here as well but that argument falls on rather deaf ears given that Ms Hayes was not successful. In the end, Ms Laphorn brought a claim which was successful albeit on a modest basis and she is entitled to have a contribution to her costs in consequence.

Determination

[12] This was a matter heard effectively over two days but with only the second day being in effect a full sitting day. It would perhaps be more accurate to say that in terms of elapsed time, the matter took a day and a half to hear. On that basis then, using the daily tariff approach, an award in the order of something around \$3,500 would be realistic, all other things being equal.

[13] In this particular case, I think an award of that magnitude rather over states Ms Laphorn's entitlement and I think it is appropriate to reflect the fact that she did not persevere with a number of her claims at the last minute and that she was only successful in relation to one of her heads of personal grievance.

[14] That being the position, I think the proper order in all the circumstances is one of \$3,000 and I now direct that Ms Hayes is to pay Ms Laphorn the sum of \$3,000 as a contribution to her costs inclusive of the disbursements which Ms Laphorn has referred to.

James Crichton
Member of the Employment Relations Authority