

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Kim Larsen (Applicant)
AND Parfums Christian Dior (New Zealand) Limited (Respondent)
REPRESENTATIVES Natalie Finn for the applicant
Ross France for the respondent
MEMBER OF AUTHORITY James Wilson
INVESTIGATION MEETING 7 March 2006
DATE OF DETERMINATION 15 September 2006

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In a determination dated 27 April 2006 (Determination AEA 140/06) I found that:

- *The applicant, Mrs Kim Larsen, was not constructively dismissed from her employment with Parfums Christian Dior (New Zealand) Ltd.*
- *Dior did not breach its duty to provide Mrs Larsen a safe workplace and Mrs Larsen does not have a personal grievance in this regard.*
- *In not allowing Mrs Larsen to work out her notice, Dior unjustifiably dismissed her from her employment and she is entitled to compensation for the hurt and humiliation that that unjustified dismissal caused her.*
- *In compensation for the hurt and humiliation caused to her by her unjustified dismissal Dior is to pay Mrs Larsen \$2500 without deduction.*
- *Mrs Larsen is entitled to be paid a bonus payment of \$2181 (as calculated by Dior) and not the \$5,120 she is seeking.*

In that determination I reserved the question of costs to give the parties an opportunity to settle this issue between themselves in the first instance. They have been unable to do so and Ms Finn has filed a memorandum seeking costs on behalf of Mrs Larsen. Mr France, on behalf of Parfums Christian Dior (NZ) Ltd, has filed a submission in response.

The submissions

[2] Ms Finn's submissions are brief. She says that the Authority found that Mrs Larsen had been unjustifiably dismissed, the parties had made efforts to resolve the issue of costs but have been unsuccessful and the Authority has discretion regarding whether or not costs should be awarded, and the amount to be awarded. She says that it is appropriate for Dior to contribute towards Mrs Larsen's legal costs and is seeking \$1500 as a contribution towards those costs. Ms Finn makes no attempt to persuade the Authority as to how it should use its discretion nor does she set out Mrs Larsen's actual costs.

[3] Mr France, for Dior, points out that the Authority found that the applicant was successful in only one of her four claims. He says that the Dior had to spend considerable time and resources defending Mrs Larsen's claims and argues that costs should be allowed to lie where they fall.

Discussion

[4] The award of costs in matters before the Authority is, as Ms Finn has pointed out, discretionary. The principles generally applied to the use of this discretion were set out and endorsed by the Employment Court in *PBO v Da Cruz* unreported, AC 2A/05, 9 December 2005. The Court listed these principles as:

- *There is a discretion as to whether costs would be awarded and what amount.*
- *The discretion is to be exercised in accordance with principle and not arbitrarily.*
- *The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority.*
- *Equity and good conscience is to be considered on a case by case basis.*
- *Costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.*
- *It is open to the Authority consider whether all or any of the parties costs were unnecessary or unreasonable.*
- *That costs generally follow the event.*
- *That without prejudice offers can be taken into account.*
- *That awards will be modest.*
- *That frequently costs are judged against a notional daily rate.*
- *The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.*

[5] Mrs Larsen was successful in one of her claims against her former employer - the Authority found that she had been unjustifiably dismissed - and she is entitled to recoup some of her legal expenses in bringing her claim. On the other hand she was unsuccessful in three other claims. It is certainly arguable that, had she pursued only that claim with which she was successful, this case would have been less complex and both parties would have expended less time and money. Mrs Larsen was of course entitled to bring these claims but, in this case, it would be inequitable for her to receive the same level of contribution to her costs as she would have been entitled had she been successful in all of her claims. The award to Mrs Larsen will therefore be at the lower end of the range usually awarded by the Authority.

[6] Parfums Christian Dior (NZ) Ltd is to pay Mrs Larsen \$900.00 as a contribution towards her costs.

James Wilson
Member of Employment Relations Authority