

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2012] NZERA Wellington 68
5362325

BETWEEN ROBYN MARIE LLOYD
 Applicant

AND AV SERVICES (1994)
 LIMITED
 Respondent

Member of Authority: G J Wood

Representatives: David Becker, for the Applicant
 Peter Stobbart, for the Respondent

Investigation Meeting: 19 June 2012 at Wellington

Submissions Received: By 20 June 2012

Determination: 20 June 2012

ADJOURNMENT AND COSTS DETERMINATION OF THE AUTHORITY

[1] After filing a statement in reply, the respondent (AV Services) then failed to attend two planned conference calls, despite notice of them, consistent with its refusal to attend mediation. At that point, I formally drew AV Service's attention to ss.181 and 182 of the Act in respect of negative consequences for it that may result from a failure to engage constructively in the Authority's investigation process. Despite that notice, AV Services then failed to provide any statements of evidence on its behalf, or any documents it intended to rely on, as required in a notice of directions.

[2] Although Mr Stobbart, on behalf of AV Services, gave notice a few days before the investigation meeting that he intended to be present and defend Ms Lloyd's allegations, and that he would like to call upon witnesses to support his case, he took no steps to do so in advance of the investigation meeting. He then arrived late to the investigation meeting. At that point he provided written briefs of evidence from himself and one witness. Another witness also attended in person.

[3] As part of Mr Stobbart's own statement, he commented that he was "*prepared to sell what I have to hire a lawyer to fight this if the Tribunal would grant me the time to reassess my case based on the massive amount of evidence discovered in the last 24 hours*". This statement was, in fact, a precursor to an application for an adjournment. However, Ms Lloyd, when faced with the written statements for the first time, together with a large bundle of documents (which she had no opportunity to peruse as there were no copies provided), decided that she would instruct Mr Becker to apply for an adjournment and for costs.

[4] Given that both parties were in effect seeking an adjournment, I granted it, particularly as Ms Lloyd could otherwise have been greatly prejudiced by the late and incomplete provision of witness statements and written documentation by AV Services. While much of the information to be provided by AV Services may not be relevant to the claims for unjustified dismissal and breach of good faith, it is impossible to draw such a conclusion without analysing this unseen documentation. Therefore, Ms Lloyd may well have been greatly disadvantaged had the matter been investigated that day.

[5] As a result of AV Services' decision to be involved in the investigation process (albeit late), the parties will now be able to participate in the investigation into the matter fully at a later date. AV Services undertook to provide copies of all its documentation to the Authority and Ms Lloyd's representative by midday, 19 June 2012, and that Mr Stobbart would be available for a directions conference to reschedule the substantive investigation meeting date. I note that, yet again, AV Services has failed to provide the documentation, even when having voluntarily offered to do so.

[6] AV Services has been responsible for all the delays. Mr Stobbart acknowledged that AV Services, which is a small business of which he is the principal, had avoided interaction with the Authority as a knee jerk reaction to Ms Lloyd's claims, and had until recently been avoiding dealing with the issues because he and AV Services felt so strongly about Ms Lloyd's behaviour towards them. That is, however, no excuse for AV Services' failure to facilitate the Authority's investigation, particularly given the Authority's earlier reference to ss.181 and 182 of the Act.

[7] It is, therefore, appropriate for Ms Lloyd and her witness to be reimbursed \$1,193.30 for travel and accommodation for which receipts have been provided, (except for \$31 for a taxi fare from the airport, which I accept is a standard fare into the city). I conclude that these expenses were reasonably incurred, and may need to be repeated for the next investigation meeting.

[8] Mr Becker also sought \$1,000 in costs for the one hour's attendance on 19 June, together with the need for additional directions conferences. He increased that claim the next day to \$2,800, adding in wasted preparation time.

[9] Preparation time will not be wasted, as it should not have to be done twice. I therefore find that it is appropriate for the cost of two hours' attendances to be paid by AV Services, as a contribution to Ms Lloyd's costs. That sum is \$700.

[10] In conclusion, I order the respondent, AV Services (1994) Limited, to pay to the applicant, Ms Robyn Lloyd, the sum of \$700 in costs and \$1,193.30 in expenses.

G J Wood
Member of the Employment Relations Authority