

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Adam Lee Malligan (Applicant)  
**AND** Brooklyn Farms Limited (Respondent)  
**REPRESENTATIVES** For the Applicant - Stephen Clews,  
For the Respondent - Vinay Deobhakta,  
**MEMBER OF AUTHORITY** Ken Anderson  
**DATE OF DETERMINATION** 9 May 2005

**DETERMINATION OF THE AUTHORITY AS TO COSTS**

- [1] The substantive matter, pertaining to alleged personal grievances, was set down for an investigation meeting on 25 January 2005. The Respondent (“Brooklyn Farms”) provided its briefs of evidence within the schedule agreed to. There were no materials provided for the Applicant, Mr Malligan.
- [2] On 20 January 2005, Counsel for Mr Malligan informed the Authority, that Mr Malligan did not intend to continue with the investigation meeting and that he was withdrawing his claims from the Authority.
- [3] Via a letter dated 24 January 2005, Mr Deobhakta conveyed that Brooklyn Farms would be pursuing an application for costs. Submissions were received by the Authority on 10 February 2005. There are no submissions from Mr Malligan.
- [4] Mr Malligan was legally aided hence any order for costs must be limited to the contribution that Mr Malligan was required to make under s 15(1) of the Legal Services Act 2000 (“the Act”), usually the sum of \$50.
- [5] The submissions for Brooklyn Farms reveal that costs of \$4,000 (plus GST) were incurred. Brooklyn Farms is seeking an order under s 40(4) of the Act. This provision of the Act provides that:  
  
“Where because of this section, no order for costs is made against an aided person, an order may be made specifying what order of costs would have been made against that person with respect to the proceedings if this section had not affected that person’s liability.”
- [6] The submissions for Brooklyn Farms are that an order under s 40(4) is appropriate because:
  - (a) Particularly disturbing allegations were made against Mr Brown, particularly pertaining to the sexual harassment allegations;

- (b) The Respondent was forced to take steps to defend/rebut the allegations and as a consequence costs were incurred;
- (c) Mr Malligan abandoned his claims five days before the date of the investigation meeting; and
- (d) Having abandoned his claims, Mr Malligan, via his lawyer, continued to maintain his allegations of sexual harassment.

## **Determination**

- [7] Mr Malligan put Brooklyn Farms to some expense by making serious and possibly malicious allegations, which he subsequently, was not prepared to follow through on. Had he not been on legal aid, I believe that this is one of those exceptional cases where an award of full client solicitor costs would have been appropriate.

Therefore, if Mr Malligan had not been in receipt of legal aid, I would have ordered that he pay the sum of \$4,000.00.

**Ken Anderson**  
**Member**  
**Employment Relations Authority**