

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Judith Anne Mann (Applicant)  
**AND** Cannon Hygiene NZ Limited (Respondent)  
**REPRESENTATIVES** Len Andersen, Counsel for Applicant  
Paul McBride, Counsel for Respondent  
**MEMBER OF AUTHORITY** James Crichton  
**SUBMISSIONS RECEIVED** 3 April 2006  
18 April 2006  
**DATE OF DETERMINATION** 10 May 2006

**COSTS DETERMINATION OF THE AUTHORITY**

*The application for costs*

[1] By determination dated 31 January 2006, the Authority resolved the employment relationship problem between these parties by determining that Ms Mann did have a personal grievance by reason of an unjustified constructive dismissal although the remedies awarded were abated by a 50 per cent contribution from Ms Mann.

[2] Costs were reserved.

*The claim for costs*

[3] Ms Mann as the successful party seeks an order for costs in the sum of \$2000 which she says is approximately two-thirds of the actual costs she incurred.

[4] It is clear from the helpful breakdown supplied by Ms Mann's counsel in support of her application for costs that the figure claimed includes around four hours in attendance at mediation and in preparation for mediation. As Cannon Hygiene Limited ("Cannon") correctly observe in their submissions, costs incurred in mediation prior to an Authority investigation are not normally awarded as the general principle is that an award is made on the basis of the costs actually and reasonably incurred by the successful party in the Authority's investigation and in the appropriate preparation for that.

[5] Again, as Cannon point out in their submissions, it is not usual for GST to be included as part of a costs award in the Authority.

[6] If the four hours or thereabouts that has been devoted to mediation and the preparation for mediation is deducted from the total bill of costs incurred by Ms Mann, that would reduce the costs incurred to around \$2200.

***The legal principles***

[7] The very recent decision of the Full Court in *PBO Ltd v Da Cruz* AC 2A/05 helpfully sets out the relevant principles.

[8] A tariff based approach is frequently used by the Authority in determining costs awards.

[9] Ms Mann as the successful party is entitled to the benefit of a costs award on the principle that the costs should generally follow the event.

[10] The notional daily rate would apportion a figure, on the most recent information available, of between \$2000 and \$2500 for a simple matter of this kind. The investigation meeting took half a day and consisted of a hearing devoted to the evidence of two witnesses only. The matter did not involve complex legal or factual issues.

***Determination***

[11] Taking all those factors into account, I think the appropriate award is a figure of \$2000 and I direct that Cannon is to pay Ms Mann that sum as a contribution to her costs.

[12] I consider that award correctly balances the competing issues I have just referred to and reflects the size and extent of the case brought by Ms Mann and the nature of its outcome.

James Crichton  
Member of Employment Relations Authority