

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**AA 228A/07
5073145**

BETWEEN JOSEPHINE MATICH
 Applicant

AND FAIRFAX NEW ZEALAND LIMITED
 Respondent

Member of Authority: Leon Robinson

Submissions received: 15 August 2007
 28 August 2007

Determination: 4 September 2007

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] By a Determination dated 1 August 2007, the Authority determined that the applicant was not employed by the respondent Fairfax New Zealand Limited ("Fairfax").

[2] Fairfax by its counsel asks the Authority to make an order that the applicant Ms Josephine Matich ("Ms Matich") pay a reasonable contribution to its costs. Fairfax's actual costs are advised as \$4,565.14. It very responsibly seeks a contribution from Ms Matich to those costs in the amount of \$1,500.00.

[3] Ms Matich resists the application for costs. She points out to the Authority she was justified in declining Fairfax's offer that she be an employee by reason of "hugely extenuating" circumstances. She also laments the time involved in the investigation which she says was delayed and in particular, because of a Fairfax witness' unavailability. She says she should not be responsible for Fairfax's costs. Finally she says rather naively, that she ought to have been advised by the Authority when she first lodged her problem that she did not "have a case". The Authority does not pre-determine problems without investigating them.

[4] The exercise of my discretion calls for a determination of what is a fair and reasonable contribution as between the parties. The Authority adopts a principled approach taking into account relevant matters and having no regard for irrelevant ones.

[5] The investigation meeting proceeded over one half day. Fairfax successfully resisted Ms Matich's claim and is therefore to be regarded as the successful party. It is entitled to a contribution to its costs. Costs awards in the Authority are modest and in this instance, I see no reason to depart from the conventional approach. Regrettably, I do not have any information from Ms Matich as to her ability to pay although I deduce from her description of her circumstances that she is financially constrained.

[6] Accordingly, exercising my discretion on a principled basis, and taking all the above matters into account, I conclude a contribution of \$1,000.00 is appropriate. **I order Josephine Matich to pay to Fairfax New Zealand Limited the sum of \$1,000.00 as a contribution to costs.**

Leon Robinson
Member of Employment Relations Authority