

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

Determination: WA 15/08

File Number: 5090442

BETWEEN                      Amber McKee  
   Applicant

AND                              Corringham Investments  
   Limited  
   Respondent

Member of Authority:        Denis Asher

Representatives:             Baden Meyer for Ms McKee  
   David Booth for the Company

Submissions received:        Submissions dated 8 January 2008 from the applicant;  
   no submissions received from the respondent

Determination:                11 February 2008

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**COSTS DETERMINATION OF THE AUTHORITY**

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- [1]     Following a one-day investigation, in my substantive determination dated 11 December 2007 (WA 165/07) I found in favour of Ms McKee's claim she had been unjustifiably dismissed by the Company.
- [2]     I awarded Ms McKee compensation for humiliation, etc of \$8,000 and lost pay equivalent to \$6,240. Costs were reserved.

### Applicant's Costs Claim

- [3] In submissions dated 8 January 2008 counsel for the applicant, Mr Baden Meyer advises his client has incurred total costs of \$6,277.50. These include attendance at mediation although no amount is attributed.
- [4] Costs are sought on the basis that they should follow the event and that the highest possible award should be granted because of her comprehensive success and because of the respondent's "*delaying tactics throughout these proceedings which have resulted in more costs being incurred*" by Ms McKee (par 5). No analysis is provided in support of this claim.

### Respondent's Costs Position

- [5] Notwithstanding the clear advice given the parties at the investigation, including in respect of their substantive risks, the appeal process and a costs timetable, the only recent communication from the Company is a letter received on 28 January 2008. In it Mr Booth says (verbatim):

*I have returned from holiday to be greeted by the Authorities Decision.*

*I am astounded that the lies perpetrated by Ms McKee have been accepted by the Authority.*

*I am equally astounded that the Authority has the audacity to make some of the assumptions it has promulgated in its decision.*

*Consequently, all efforts will now be made to **fully contest** the Authority's decision.*

- [6] As requested by Mr Booth, and by return mail on the same day, support staff advised he should seek legal advice or alternatively make contact with the Employment Court because of the 28-day period from the date of the determination to challenge the Authority's decision (with further details attached).
- [7] Mr Booth was also advised the respondent had until 8 February to file any costs submissions it wanted to put to the Authority.

### Discussion and Findings

- [8] Mr Booth did not uplift the Authority's invitation set out in its letter of 28 January to make costs submissions by 8 February.
- [9] As at the 8<sup>th</sup> of February 2008, the Employment Court advised no steps had been taken by the Company by way of filing a challenge to the Authority's determination.
- [10] As I found in my substantive determination, the participation by the Company, by way of one of its directors, Mr Booth, in the resolution of this employment relationship problem was less than enthusiastic; see par 45 of the substantive determination. This lack of participation included a delay in addressing the initial notice of the grievance as well as in subsequently undertaking mediation, and a failure to voluntarily provide relevant information about the problem (refer to the direction set out in the Record of Preliminary Conference and Directions to provide relevant information).
- [11] I was satisfied there has been a deliberate pattern of evasive conduct by the respondent which is relevant to costs and, possibly s. 181 of the Act.
- [12] Bearing in mind the above, and consistent with the principles set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808, I am satisfied that the applicant is entitled to a fair and reasonable contribution to her costs of \$3,500.

### **Determination**

- [13] Corringham Investments Limited is directed to pay to Amber McKee the sum of \$3,500 (three thousand and five hundred dollars) as a fair and reasonable contribution to her legal costs.

**Denis Asher**

**Member of the Employment Relations Authority**