

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 144A/08

5110922

BETWEEN Megan McLeay
Applicant

AND Radius Residential Care Limited
Respondent

Member of Authority: Denis Asher

Representatives: Alan Millar for Ms McLeay
Sally Leftley for the company

Submissions received: By 10 December 2008

Determination: 18 December 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 28 October 2008 (WA 144/08) I found in favour of Ms McLeay and awarded her \$3,000 compensation for humiliation. Costs were reserved.

Ms McLeay's Costs Claim

[2] Ms McLeay says she offered to settle her costs for \$1500 but no agreement resulted. The applicant now seeks costs of \$1800.

- [3] That figure is arrived at “on a basis of 50% of the amount granted for the hearing” (par 4, submissions received 10 December 2008). The investigation encompassed both the morning and the afternoon.
- [4] Some of the day’s investigation included efforts by the parties to, unsuccessfully, settle all matters between them, including the problem that was determined by the authority. That time should be included in any costs assessment.

The Company’s Costs Claim

- [5] In light of my determination on costs it is unnecessary to summarise the company’s position other than to say it continues to offer \$750 as “fair recompense for a half-day investigation” (respondent’s letter of 25 November).

Findings

- [6] The Authority’s discretion with which to award costs is now well settled and typically follow the event: *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.
- [7] As my file record reminds me, this was a half-day investigation. That the parties (properly) elected to spend some of the day in an attempt to resolve all matters between them should not be reflected in a costs award for Ms McLeay because – despite their best efforts – they were unsuccessful. That effort was very similar if not the same as parties undertake in going to mediation: costs are typically not awarded for those efforts.
- [8] As indicated to the parties during the investigation, and after regard to their submissions, I am satisfied there is no reason to depart from the authority’s normal range of costs awards for what proved to be a half day investigation. A costs award of \$750 for a half day investigation is appropriate in all the circumstances.

Determination

[9] The company is to pay to Ms McLeay as a contribution to her fair and reasonable costs \$750 (seven hundred and fifty dollars).

Denis Asher

Member of the Employment Relations Authority