

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Douglas Melville (Applicant)  
**AND** MarketSMART International (NZ) Ltd (Respondent)  
**REPRESENTATIVES** Dean Organ, for the applicant  
Anna Fitzgibbon, for the respondent  
**MEMBER OF AUTHORITY** Marija Urlich  
**SUBMISSIONS RECEIVED** 29 July, 12 and 16 August 2005  
**DATE OF DETERMINATION** 6 October 2005

**DETERMINATION OF THE AUTHORITY AS TO COSTS**

**Application for costs**

[1] Following a full days investigation meeting and the filing of closing submissions, I found, in a determination dated 22 July 2005, that Mr Melville's redundancy from his position at Market Smart amounted to an unjustifiable dismissal.

[2] The parties were invited to resolve costs between them and in the event such attempts were unsuccessful leave was given for application to be made to the Authority to determine costs. The parties have not been able to agree the issue of costs and have filed submissions in the Authority setting out their respective positions.

**Costs in the Authority**

[3] The Authority has a discretion to award costs and expenses as it thinks reasonable<sup>1</sup>. The usual principles and rules applicable to costs' determinations in a traditional setting are relevant to the Authority's exercise of its discretion, though such principles must be seen in light of the investigative nature of the Authority process and the objects of the Act. In exercising its costs discretion the Authority must take into account relevant issues and excluding irrelevant issues from its consideration.

[4] Recent costs tables compiled by the Department of Labour show most costs awards in the Authority range between \$2000 and \$2500 for a one-day hearing.

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<sup>1</sup> Schedule 2 clause 15 Employment Relations Act 2000

**The parties' submissions**

[5] For Mr Melville, Mr Organ submits:

- (i) Mr Melville is the successful party and as such he is entitled to a reasonable contribution to costs reasonably incurred;
- (ii) success on procedural grounds alone does not disentitle Mr Melville to a costs award in his favour;
- (iii) Mr Melville was awarded remedies totalling \$5000;
- (iv) there is no basis for the respondent to speculate that "no win/no fee" is the fee arrangement between Mr Melville and his representative;
- (v) total costs incurred are \$4921.88 plus GST, plus filing fee of \$70;
- (vi) it was unreasonable that no settlement offer was made given the likely success of Mr Melville's claim; and
- (vii) contribution to costs incurred of 60% is sought (\$2953.13) to avoid erosion of any benefit of remedies awarded;

[6] For MarketSMART Ms Fitzgibbon submits:

- (i) the respondent was put to considerable expense to defend the raft of claims advanced by Mr Melville, most of which were unsuccessful;
- (ii) MarketSMART has made reasonable attempts to resolve the costs issue without incurring further expenses; and
- (iii) costs should lie where they fall.

**Determination**

[7] Mr Melville was the successful party and it is usual that costs should follow the event. The extent of that success was modest given the number of claims raised and remedies sought. This is a relevant factor when considering an appropriate award of costs.

[8] MarketSMART is ordered to contribute to Mr Melville's costs to the sum of \$2000. MarketSMART is also required to reimburse Mr Melville the \$70 filing fee incurred in lodging his application with the Authority.

Marija Urlich  
Member of Employment Relations Authority