

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 1
5117249

BETWEEN HELEN MILNER
Applicant

AND FONTERRA COOPERATIVE
GROUP LIMITED
Respondent

Member of Authority: Yvonne Oldfield

Representatives: D.G. Hayes for Applicant
Sally Beard for Respondent

Submissions received: 10 December 2010 from Applicant
14 December 2010 from Respondent

Determination: 5 January 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] This matter was the subject of a preliminary determination granting leave to the applicant to raise her grievance out of time and to a substantive determination dated 23 November 2010. Ms Milner was successful in establishing a personal grievance of unjustified dismissal and orders were made in her favour for lost earnings, compensation for hurt and humiliation and compensation for loss of benefit.

[2] She now seeks a contribution to her costs. Mr Hayes has explained that Ms Milner incurred costs of \$3,107.50 in respect of the application for leave and \$4,218.75 in respect of the substantive matter (costs in respect of mediation being additional.) Ms Milner seeks a contribution to those costs of \$2,500.00 in respect of the preliminary issue and \$3,500.00 in respect of the substantive matter.

[3] The respondent asserts that costs should not be awarded to an applicant in respect of an application for leave to raise a personal grievance out of time.¹ It is also asserted (correctly) that the preliminary matter involved little dispute in respect of the facts and the parties were able to give simple verbal submissions. As for the substantive matter, the respondent notes that this took less than a day and would have been shorter still if it were not for breaks required as a result of the applicant's poor health.

[4] Notwithstanding the above, the respondent advised that it was prepared to offer the sum of \$2,500.00 towards Ms Milner's costs, which it says is reasonable in all the circumstances.

Determination

[5] The respondent's submission in respect of costs on the preliminary issue is not accepted. Costs are not always awarded to a party that has successfully sought an indulgence but it remains common for the Authority to order a contribution to the costs of a party seeking leave to raise a grievance out of time.

[6] In this case, unlike that of *MacDonald v Health Technology Ltd*, neither party has unnecessarily increased costs by the way the case was conducted. In all the circumstances I am satisfied that costs should be in the normal range in respect of both the preliminary and substantive matters.

[7] **Fonterra is therefore ordered to pay the total sum of \$3,500.00 to Ms Milner as a contribution to her costs.**

Yvonne Oldfield

Member of the Employment Relations Authority

¹ *MacDonald v Health Technology Ltd* [1992] 2 ERNZ 735