

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2012] NZERA 162
5371536

BETWEEN MINISTER OF EDUCATION
 Applicant

 LORRAINE GUTHRIE
 Respondent

Member of Authority: G J Wood

Investigation Meeting: By way of submissions

Submissions Received: Due by 6 September 2012

Determination: 18 December 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] In this case the Minister of Education (applicant by law because of the closure of the school concerned) claimed that a former employee of Waimokoia School, where Ms Guthrie was the Principal at the time, was responsible for improper expenditure, including expenses claims. It was also claimed that Ms Guthrie should be liable to reimburse the Minister because as the Principal she had allegedly been a party to these breaches (and therefore of the parties' employment agreement).

[2] Ms Guthrie filed a statement in reply in which she properly pointed out that she had entered into a settlement agreement with Waimokoia School that covered all claims that either party might make against the other. Two weeks later the claim against Ms Guthrie was withdrawn.

[3] Ms Guthrie now claims \$1,750 in costs in preparing her defence, and \$3,200 for executive time. Even although Ms Guthrie only had to file a statement in reply, I accept that she is entitled to a contribution towards her costs, because a claim would

never have been made against her had the Minister's advisers properly perused her settlement agreement. However the claim was promptly withdrawn once Ms Guthrie put the Minister's advisers clearly on notice that such an application could not succeed.

[4] In these circumstances it is appropriate for Ms Guthrie to be reimbursed a proportion of the legal costs she incurred, relating solely to her defence to the claim, but not to her co-respondent's costs.

[5] I consider that an appropriate sum for perusing the settlement agreement and informing the applicant of Ms Guthrie's absolute defence by way of a statement in reply could be no more than \$500, but that Ms Guthrie is entitled to all of that sum (and not just a proportion of it), because the claim should never have been brought.

[6] I am not satisfied that Ms Guthrie should be reimbursed for executive time. She attended the investigation meeting as representative for her co-respondent and is not entitled to costs in her own right, and nor does she claim such. Instead I conclude that once Ms Guthrie had received legal advice nothing more was required of her in time and effort.

Costs

[7] I therefore order the applicant, the Minister of Education, to pay to Ms Lorraine Guthrie the sum of \$500 in costs.

G J Wood
Member of the Employment Relations Authority