

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Karen Monk (Applicant)
AND New Zealand Lotteries Commission (Respondent)
REPRESENTATIVES Paul McBride and Melanie Brewer for Applicant
Les Taylor and Megan Richards for Respondent
MEMBER OF AUTHORITY P R Stapp
SUBMISSIONS 6, 19, 22 and 23 December 2005 and 9 January 2006
DATE OF DETERMINATION 10 February 2006

COSTS DETERMINATION OF THE AUTHORITY

1. The Authority reserved costs in a determination dated 1 August 2005. Costs have not been settled and upon submissions I am required to determine an amount for the respondent to contribute to the applicant's costs.
2. The applicant has applied for \$18,566.46 plus GST being at least 66% of the total legal fees incurred (exclusive of mediation and pre dismissal involvement) and full disbursements. Total disbursements are \$605.60 (couriers \$10.60, filing fee \$70, hearing fees \$450 and photocopying expenses \$75).
3. The Respondent seems to accept the principle that costs follow the event where the applicant was successful. However it submits that only a modest award should be made having regard to the scheme of awards made by the Authority and with allowance being given to a without prejudice offer made by the respondent to settle.
4. In reply the applicant asked the Authority to take into account the nature of the investigation that involved some questioning from Counsel, apply the principles as a

matter of discretion and not be limited by the average of any tariffs. Furthermore the Authority was requested to have regard to the complexity of the matters and conduct of the parties. The applicant has asked that the offer to settle from the respondent be set aside because the amount awarded to the applicant was in excess of the sum offered to settle.

5. I have taken into account the *Calderbank* letter sent to the applicant referring to the expediency of \$20,000 to save costs for an investigation only to conclude that this matter was going to involve a considerable amount of costs. Because the amount awarded to the applicant exceeds the amount offered to settle I will not use it to overturn the applicant's right to a contribution towards her costs. I have also perused the applicant's costs in a memorandum of 16 June 2005 from her solicitors sent to the applicant after the investigation meeting was held.
6. Some considerable costs have been incurred involving three days allocated for an investigation meeting, including submissions being prepared and presented. The costs also incurred involved preparation and attendances.
7. GST is not normally included and will not be included here as a matter of principle applied generally in the Authority. Therefore, I have taken the \$17,500 for the fee from the memorandum and the average awards of \$2,499 in Authority determinations that I was referred to by the respondent. The range is \$15,001. Having regard to the nature of the investigation and the conduct of both parties, which I conclude equally added to the time involved, I have assessed reasonable costs in the order of 66% of the range. Therefore in all the circumstances of this matter relating to the conduct of the matter, preparation and attendances, the respondent is to pay the applicant \$9,900.66 costs and \$605.60 disbursements (for couriers \$10.60, filing fee \$70, hearing fees \$450 and photocopying expenses \$75).