

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2012] NZERA Wellington 80
5366783

BETWEEN

PRAVEENA NAIDU
Applicant

A N D

RADIUS RESIDENTIAL
CARE LIMITED
Respondent

Member of Authority: G J Wood

Investigation Meeting: By way of submissions received by 29 May 2012

Date of Determination: 16 July 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] In my substantive determination I found that the applicant, Ms Naidu, was unjustifiably dismissed by the respondent, Radius Residential Care Limited (Radius), because there was no reasonable opportunity for her to respond to the allegations Radius made against her, and even then not all of its concerns were raised with her. On the other hand I concluded that Ms Naidu was not dismissed for discrimination on the grounds of union activities, and that her contribution was so great as to disentitle her from any remedies whatsoever.

[2] On behalf of Ms Naidu's union Mr Oldfield sought a contribution to the union's costs to the total of \$3,000, plus all its disbursements, which totalled \$451.46. In the alternative, it was submitted that costs should lie where they fall.

[3] On behalf of Radius Mr Lattimer submitted that given Ms Naidu was not reinstated, nor awarded any financial remedies, Radius should be awarded costs, due to the degree of success it had. He noted that the costs and disbursements paid by

Radius constituted \$2,052.35, and it sought a reasonable contribution towards those expenses.

[4] The principles for costs for a worker who successfully claims that they have been unjustifiably dismissed, but are awarded no remedies, are set out in *Davis v. Harbour Inn Fisheries Limited* unreported, Couch J, CC907, 15 May 2007. Judge Couch concluded that cases such as this result in an outcome whereby both parties were found to be at fault. As stated at para.[13]:

As a matter of principle, the fact that an employee succeeds in his claim to this extent must be taken into account when fixing costs. In each case, the weight given to it will be a matter of discretion to be exercised in light of the facts of the case but it is not a factor which can be ignored or given no weight.

[5] The Judge noted that in some cases costs had been awarded to the employee, but in other cases costs have been left to lie where they fell. In the *Davis* case Judge Couch held that costs should lie where they fall.

[6] There is no particular reason to distinguish this case from *Davis*, but if anyone is to be awarded costs it would be Ms Naidu. However, given the fact that she failed in her claim of discrimination there is an even stronger case than in *Davis* for a finding that costs should where they fall. I therefore order costs to lie where they fall.

G J Wood
Member of the Employment Relations Authority