

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

<b>BETWEEN</b>	Bruce Newland (applicant)
<b>AND</b>	Waewaepa Station (2002) Limited (respondent)
<b>REPRESENTATIVES</b>	Andrew Gallie for the applicant Peter Lindström for the respondent
<b>MEMBER OF THE AUTHORITY</b>	Denis Asher
<b>SUBMISSIONS RECEIVED</b>	20 May and 8 & 9 June 2005
<b>DATE OF DETERMINATION</b>	13 June 2005

**DETERMINATION OF AUTHORITY: Costs**

**Employment Relationship Problem**

1. I earlier found against Mr Bruce Newland's claim that he had been actually or constructively dismissed by the Company – refer to determination WA 79/05, 18 May 2005.
2. Costs were reserved.

**Submissions: the respondent's position**

3. Counsel for the respondent, Mr Peter Lindström, now seeks a costs award. He says his charge out rate is \$20.50 plus GST per 6 minute unit. By way of a unit/task break down, Mr Lindström says the Station incurred costs of \$6,291.63 in addition to costs of \$1,000 to the conclusion of mediation – submissions received 23 May & 9 June 2005.
4. Mr Lindström accepts the applicable costs principles as set out by counsel for the applicant, Mr Gallie, in his submission dated 8 June and accordingly seeks an unspecified reasonable contribution to the Company's costs.

**Applicant's position**

5. The applicant submits that a reasonable contribution in all the circumstances would fall in the vicinity of \$1,500.00. Well known case law is relied on in advancing that figure: *Okeby v Computer Associates (NZ) Limited* [1994] 1 ERNZ 613 and *Reid v NZ Fire Service Commission* [1995] 2 ERNZ 38.
6. Costs should also reflect the fact that the investigatory role of the Authority reduces the role of counsel at hearing to predominantly that of spectator and the fact that Mr Newland made genuine effort throughout to resolve the employment relationship problem by way of a mutually accepted resolution.

**Discussion and Finding**

7. Mr Newland accepts that costs should follow the event, in the normal manner. At issue is the size of those costs.
8. Without intending the parties any disrespect, this was in all respects a conventional and uncomplicated but ultimately unsuccessful personal grievance. Costs were kept to a minimum by the co-operation and assistance of the parties in their preparation for, and participation in, the investigation.

9. Costs awards by the Authority are typically restricted to those incurred in respect of the investigation itself and do not extend to costs incurred beforehand, including (because of public policy considerations) the costs of undertaking mediation.
10. Extensive case law makes it clear the GST is not recoverable via costs awards: *Open Systems Ltd v Pontifex* [1995] 2 ERNZ 211, 213.
11. For the reasons set out above and by adhering to well-known principles relating to costs awards (see also, *Harwood v Next Homes Ltd*, unreported, 19 December 2003, Travis J, AC 70/03) I favour the applicant's implied proposal that costs for the Company be set at \$1,500.00.

### **Determination**

12. The applicant, Mr Bruce Newland, is to pay to the respondent, Waewaepa Station (2002) Limited, by way of a fair and reasonable contribution to its costs, the total sum of \$1,500.00 (one thousand and five hundred dollars).

**Denis Asher**

**Member of Employment Relations Authority**

