

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 219/08  
5094230

BETWEEN                      PATRICIA PULU  
   Applicant  
  
AND                                MINISTRY OF JUSTICE  
   Respondent

Member of Authority:        Marija Urlich  
  
Representatives:              Sione Fonua, for the Applicant  
   Alastair Sherriff, for the Respondent  
  
Submissions received:        19 June 2008 from the Applicant  
   16 May and 23 June 2008, from Respondent  
  
Determination:                25 June 2008

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     An investigation meeting to investigate this employment relationship problem was scheduled for 26 – 28 May 2008. On 8 May 2008, during a pre-hearing teleconference, Mr Fonua advised Ms Pulu intended to withdraw her application to the Authority. The notice of withdrawal was filed on 12 May 2008.

[2]     Counsel have filed costs memoranda.

[3]     Schedule 2, clause 15 of the Employment Relations Act 2000 provides the Authority with a discretionary power to award costs and expenses incurred in pursuing or defending an application to the Authority.

[4]     The respondent seeks a contribution to costs incurred in preparing for the investigation meeting of \$2500 (+GST). Mr Sherrif submits such an order would be modest, representing less than 25% of the respondent's actual costs and disbursements in these proceedings. He also submits that the applicant has had ample opportunity to

withdraw her proceedings earlier. The application was filed in September 2007 and subsequently refined at the instigation of the respondent. The respondent made a *Calderbank* offer on 23 January 2008 which was rejected. Mr Sherriff advises he approached Mr Fonua to discuss settlement of the costs issue and was advised Mrs Pulu was “too poor” to make any contribution to the respondent’s costs.

[5] Mr Fonua submits no costs award should be made against Mrs Pulu given the circumstances of this case namely:

- (i) Mrs Pulu’s long service with the respondent (26 years);
- (ii) the serious illness which resulted in her employment ending;
- (iii) Mrs Pulu’s belief that she was unjustifiably dismissed and her strong wish to tell her story to the Authority;
- (iv) Mrs Pulu’s appreciation of her inability to cope with the stress of an investigation meeting did not crystallise until near the hearing date and led to her decision to withdraw her application. Attached to the memorandum is a letter from Mrs Pulu ; and
- (v) Mrs Pulu is unable to work due to her poor health and age and is therefore not in a financial position to pay any costs award.

[6] In reply Mr Sherriff submits:

- (i) the evidence received by the Authority shows the respondent was not at fault in terminating Mrs Pulu’s employment by medical retirement;
- (ii) Mrs Pulu’s poor health was unrelated to her employment;
- (iii) there is no medical evidence before the Authority to support the contention that Mrs Pulu withdrew the proceedings due to ill health.

[7] I accept Mrs Pulu’s health is poor. I also accept that the anticipation of an investigation meeting can be stressful. However, there is no material before me to show Mrs Pulu withdrew her application because her state of health was such that she could not proceed with the scheduled investigation meeting. When Mrs Pulu advised of the withdrawal of her application the respondent had fulfilled the Authority’s

timetabling directions in preparation for the investigation meeting. Mrs Pulu had ample opportunity to withdraw her application prior to these costs being incurred. Another significant factor is the declining of a settlement offer which was reasonable and timely. This matter could have been settled.

[8] It is appropriate that Mrs Pulu make some contribution to costs incurred by the respondent. Taking into account the principals applicable to an award of costs in the Authority<sup>1</sup> I set that award at \$1500 plus a contribution to disbursements which I set at \$50.

[9] **The applicant is ordered to pay the respondent party \$1550 pursuant to schedule 2, clause 15 Employment Relations Act 2000.**

Marija Urlich

Member of the Employment Relations Authority

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<sup>1</sup> *PBO Limited v Da Cruz* [2005] 1 ERNZ 808