

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Janice Palmer (Applicant)
AND RNJ's Limited (Respondent)
REPRESENTATIVES Janice Palmer in person
Russell Mathers for Respondent
MEMBER OF AUTHORITY Vicki Campbell
SUBMISSIONS RECEIVED 14 December 2006 from Applicant
11 January 2007 from Respondent
DATE OF DETERMINATION 19 February 2007

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] In a determination dated 8 November 2006 I found Ms Palmer was unjustifiably dismissed from her position with RNJ's when she was made redundant, albeit the redundancy was genuine.

[2] In my determination I noted that Ms Palmer was unrepresented at the investigation meeting, but that the file indicated she had received legal advice in the early stages of her claim. I reserved the question of costs and invited the parties to resolve the matter of costs between them. They have been unable to do so and I am now in receipt of memorandum from both parties.

[3] The following principles are appropriate where the Authority is exercising its discretion in relation to costs (*PBO Ltd (formerly Rush Security Ltd) v Da Cruz*, [2005] 1 ERNZ 808):

- There is a discretion as to whether costs should be awarded and what amount;
- The discretion is to be exercised in accordance with principle;
- The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority;
- Equity and good conscience is to be considered on a case by case basis;
- Costs are not to be used as a punishment or as an expression of disapproval of an unsuccessful party's conduct although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award;
- It is open to the Authority to consider whether all or any of the parties costs were unnecessary or unreasonable;
- That costs generally follow the event;
- That without prejudice offers can be taken into account;
- That awards will be modest;
- That frequently costs are judged against a notional daily rate;
- The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[4] I have considered the submissions made by the parties and I am satisfied that the discretion under clause 15 of Schedule 2 of the Act ought to be exercised in favour of Ms Palmer.

[5] As stated earlier the applicant has incurred costs of \$618.75 plus disbursements of \$70.00 relating to the drafting, preparation and filing of Ms Palmer's personal grievance in the Authority. I find these costs to have been reasonably incurred. Ms Plamer seeks a contribution of \$344.37 towards those costs. Mr Mathers, submits the respondent is insolvent but has provided no evidence to support his submission. I note that as at today's date the company continues to trade.

[6] There is nothing in this case to derogate from the principle that costs follow the event and that the successful applicant should receive a contribution to reasonably incurred costs.

[7] RNJ's Limited is required to pay to Ms Palmer the sum of \$200 plus \$70.00 disbursements as a reasonable contribution to costs.

[8] An order is made accordingly.

Vicki Campbell
Member of Employment Relations Authority