

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Elsa Parohinog (Applicant)
AND ANZ Bank Limited (Respondent)
REPRESENTATIVES Graeme Norton, Advocate for Applicant
Andre Lubbe, Advocate for Respondent
MEMBER OF AUTHORITY R A Monaghan
MEMORANDA RECEIVED 14 and 16 January 2006
DATE OF DETERMINATION 25 January 2006

DETERMINATION OF THE AUTHORITY ON COSTS

[1] In a determination of the above, dated 19 December 2005, I found Ms Parohinog had a personal grievance on the ground there was an unjustifiable action on the part of her employer, but that she did not have a personal grievance on the ground of sexual harassment.

[2] Costs were reserved and the parties have submitted memoranda on the matter.

[3] Mr Norton sought a contribution to Ms Parohinog's costs in the sum of \$3,000, plus disbursements of \$155.20. He relied on Ms Parohinog's success in establishing her personal grievance on the ground of unjustifiable action causing disadvantage and pointed out that, while her sexual harassment grievance was not established, there was nevertheless evidence of inappropriate behaviour on the part of the manager concerned.

[4] Mr Lubbe said costs should lie where they fall. He pointed out that Ms Parohinog was only partly successful in her grievance based on unjustifiable action causing disadvantage, and that she was unsuccessful in her sexual harassment grievance.

[5] He also referred to the conduct of the parties. In that respect he noted that on 3 March 2004 the bank wrote an open letter to Mr Norton revoking the warning which was the subject of the disadvantage grievance and offering to contribute \$2,500 to Ms Parohinog's costs. The letter also pointed out that there was not enough information in support of the sexual harassment allegations to warrant taking further action against the manager.

[6] In further support of the bank's position Mr Lubbe pointed out that Ms Parohinog indicated during the investigation meeting that she wanted to pursue her grievances as a matter of principle. While there is nothing inherently wrong with that, I agree with his submission that Ms Parohinog took an adversarial and intransigent approach to the resolution of her employment relationship problem. In particular she did not place her own actions in their proper context, so ensuring that

problems which could, and should, have been resolved without recourse to the Authority nevertheless came before it.

[7] Thus she pursued a grievance based on a first warning which had been withdrawn, and in circumstances where even she acknowledged she had breached an important policy of the bank's. Although it is true that I found the bank did not investigate adequately the circumstances giving rise to the warning, Ms Parohinog's own conduct remained culpable. Moreover her view that Ms Ali should have been disciplined too was not well founded, but she persisted in making it part of her grievance anyway. Finally, she pursued a sexual harassment grievance based on four separate allegations, the strongest of which in terms of the amount of detail she was able to provide in her own evidence clearly did not amount to sexual harassment at all. Only one other allegation was even remotely supported by any evidence beyond assertion and accusation, and that evidence was not made available to the bank when the complaint of sexual harassment was first raised. Even then, there was no evidence of detriment of the kind required to support a sexual harassment grievance.

[8] Overall while Ms Parohinog may have succeeded in some matters of principle, she did so only to a very limited extent and after rejecting what I consider to be reasonable efforts on the part of the bank to resolve her employment relationship problem. This caused costs to both parties which need not have been incurred.

[9] For these reasons I conclude that the bank's position that costs be allowed to lie where they fall was reasonable. I find accordingly.

R A Monaghan
Member, Employment Relations Authority