

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
OFFICE**

BETWEEN Michelle Penniall (Applicant)
AND 101 Realty Ltd (Respondent)
REPRESENTATIVES Mark Nutsford, Advocate for Applicant
Hollie Garnett for Respondent
MEMBER OF AUTHORITY Dzintra King
MEMORANDA RECEIVED 3 July from Applicant
24 July from Respondent
DATE OF DETERMINATION 15 August 2006

COSTS DETERMINATION OF THE AUTHORITY

The applicant was granted a compliance order and now seeks costs. The applicant incurred costs of \$900 plus the \$70 filing fee. The respondent did not attend the Investigation Meeting despite being told that both the applicant's representative and I were willing to wait until she came to the Authority. Apart from stating that she found the hourly fee of \$200 extortionate Ms Garnett made no costs submissions.

The principles applicable to an award of costs in the Authority have been set out in PBO Ltd (formerly Rush Security Ltd) v Da Cruz, unreported, AC2A/05, 9 December 2005. The Full Court set out a number of principles including:

- There is a discretion as to whether costs are awarded and the amount of the award;
- The discretion is not to be exercised arbitrarily;
- Costs are not to be used punitively;
- The Authority can consider whether all or any of the parties' costs were unnecessary or unreasonable;
- Costs generally follow the event;
- Awards will be modest;
- Frequently costs are judged against a daily notional rate;
- The nature of the case can influence costs.

This was a very simple matter that could easily have been resolved by the respondent agreeing to take the olive branch offered to her at the last moment. The applicant is entitled to a contribution to her costs and there is no reason why costs should not follow the event. Awards in the Authority are generally in the vicinity of \$1,000 to \$3,000. The respondent is to pay to the applicant the sum of \$700 plus the \$70 filing fee in disbursements.

Dzintra King
Member of Employment Relations Authority