

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN	Joel Pullen (applicant)
AND	Panorama Auto Limited (respondent)
REPRESENTATIVES	Gerard Dewar for the applicant Barbara Buckett for the respondent
MEMBER OF THE AUTHORITY	Denis Asher
SUBMISSIONS RECEIVED	2 February & 17 March 2005
DATE OF DETERMINATION	24 March 2005

DETERMINATION OF AUTHORITY: Costs

Employment Relationship Problem

1. I found in favour of Joel Pullen's claim that he had been unjustifiably dismissed by Panorama Auto Limited – refer to determination WA 19/05 dated 4 February 2005.
2. The parties have not been able to reach agreement on a contribution to Mr Pullen's fair and reasonable costs.

Submissions: the applicant's position

3. Mr Pullen says costs should reflect the Company's conduct during the investigation. It was late in meeting the agreed timetable for filing its witness statements. It also failed to co-operate in the production of an agreed bundle of documents. The Company waited until the morning of the investigation to table evidence. The Company's conduct amounted to trial by ambush, was intended to weaken the credibility of Mr Pullen in the Authority's eyes and unnecessarily extended the investigation. Mr Pullen's costs total \$5,492.00. This is based on a standard applicable charge-out rate of \$225.00. Costs of \$3,500 are sought.

Respondent's position

4. The Company is willing to offer Mr Pullen a contribution to his costs of \$1,500.00. The offer is based on its view that it is consistent with well-established principles and fair and reasonable in all the circumstances.

Discussion and Findings

5. I am satisfied that, in this case, costs should follow the event in the usual fashion. I am also satisfied that those costs should be increased so as to take account of the effects of the Company's failures to adhere to the agreed timelines for filing its witness statements and to provide an agreed bundle of documents. Those failures, I hold, put Mr Pullen to greater cost as they handicapped his ability to prepare for the investigation which was, in turn, unnecessarily extended.

Determination

6. For the reasons set out above I find in favour of Joel Pullen's claim that he is entitled to recover from Panorama Auto Limited a reasonable contribution to the costs he has incurred. Accordingly, I order the Company to pay to Mr Pullen the sum of \$3,000 (three thousand dollars) in costs.

Denis Asher

Member of Employment Relations Authority