

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Jennifer Quintal (Applicant)
AND Restaurant Brands Ltd (Respondent)
REPRESENTATIVES Lynda Emmerson, for Applicant
Shan Wilson, for Respondent
MEMBER OF AUTHORITY Y S Oldfield
SUBMISSIONS RECEIVED 31 August 2005, 25 November 2005
DATE OF DETERMINATION 5 April 2006

DETERMINATION OF THE AUTHORITY AS TO COSTS

- [1] In a determination dated 3 August 2005 I concluded that Ms Quintal's dismissal was justified and that I could do nothing more about her employment relationship problem. The successful respondent now seeks a contribution to its costs, which it says came to \$21,209.00 excluding GST, plus disbursements of \$745.38.
- [2] In submissions it was noted that the Authority meeting took 8 hours which when a multiplier of three is applied gives a total of 24 hours inclusive of preparation time. The charge out rate of the respondent's Counsel was \$370.00 plus GST so the nominal cost of representation comes to \$8,880.00 plus GST. Counsel submits that this is "*the least the respondent could be expected to be awarded in the normal course of events.*"
- [3] However, Ms Quintal was legally aided. Accordingly, the respondent seeks a costs payment equal to the contribution which the applicant is or was required to make to the Legal Services Agency pursuant to section s.86 of the Legal Services Act and Legal Services Regulations 2000, Regulation 7. Counsel for the respondent set out for me the scheme by which the aided party's contribution is calculated. It involves applying a formula to the disposable income of the aided party.
- [4] In addition the respondent seeks a determination from the Authority as to the award of costs the respondent would otherwise have received had the applicant not been legally aided, so that an application can be made pursuant to s.86 of the Legal Services Act to the Legal Services Committee for payment.
- [5] Ms Quintal's solicitor advised that she would not be filing submissions on costs except to say that her client did not make a contribution to the Legal Services Agency.

Determination

- [6] Since I have been advised that the applicant did not make a contribution to the Legal Services Agency, I proceed to determine this application on the basis of conclusions about what the respondent would otherwise have received had the applicant not been legally aided.
- [7] In doing so I have relied on the recent full bench decision of the Employment Court in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz (unreported, Employment Court, Auckland, AC 2A/05, 9 December 2005.)*
- [8] This was not a case of any great complexity and required an investigation meeting lasting under a day. It does not warrant an award of costs outside the normal range for a meeting of that length.
- [9] **Had the applicant not been legally aided I would therefore have ordered that the applicant pay to the respondent the sum of \$2,000.00 as contribution to costs.**

Y S Oldfield
Member of Employment Relations Authority