

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

File Number:5038582
Determination Number
WA 19A/07

BETWEEN WANITA ANNE RARERE
Applicant

AND ELECTROTECH CONTROLS
LIMITED
Respondent

Member of Authority: G J Wood

Representatives: David Oliver for Applicant
Matthew Lawson for Respondent

Submissions received: By 20 July 2007

Determination: 24 July 2007

COSTS DETERMINATION OF THE AUTHORITY

[1] In my preliminary determination, I found that the applicant, Ms Wanita Rarere, had raised none of her grievances within the 90 day period required by the Act, but that she had made reasonable arrangements to have her disadvantage and dismissal grievances raised within that period. Therefore exceptional circumstances existed over the late raising of the grievances (due to the failures of her then representative). I also held that the justice of the case meant that her claims should be heard before the Authority.

[2] In my substantive determination, I found that Ms Rarere was unjustifiably constructively dismissed/disadvantaged by the respondent (Electrotech) and that Electrotech breached her employment agreement by not offering her subsidised medical insurance after the first three months of her employment. I dismissed her claims based on legitimate expectation and for penalties. I also dismissed her claim for travel allowances and compensation for the loss of a CD rom. I ordered

[3] Electrotech to pay to Ms Rarere \$7,000 in compensation, \$8,482.50 gross in lost remuneration and damages of \$939.92.

[4] On behalf of the applicant, Mr Oliver claimed full costs of \$14,119.35, of which legal aid constituted \$3,856.85.

[5] On behalf of Electrotech, Mr Lawson submitted that because the grievance claims were outside the 90 day period and Ms Rarere was unsuccessful on many of her claims, Electrotech's costs of \$7,729.35 for the preliminary investigation meeting ought to be met by Ms Rarere. Mr Lawson also noted that Electrotech had spent \$6,478.88 in defending the substantive claims and was successful in defending some of those. He also noted that the substantive determination was being challenged before the Employment Court and therefore costs ought to be held in abeyance pending the outcome of that case.

[6] There is no reason to hold this costs determination in abeyance. The most practical solution is for me to determine costs at this point so that if there is any challenge to them they can be dealt with by the Employment Court at the same time as the substantive challenges.

[7] I accept that Ms Rarere, having been successful in her main claim of unjustifiable dismissal/disadvantage, is entitled to a contribution to her costs, but that there must be an offset against her claim for costs for the investigation into exceptional circumstances, because even though she was successful, had it not been for the default of her former representative for which Electrotech can have no responsibility, no such preliminary investigation meeting would have been needed. I also need to take into account the amount of investigation meeting time and preparation, which was admittedly minimal in this case, accorded to the claims on which Ms Rarere was not successful.

[8] I note that the costs application covers preparation for and time spent in mediation. Costs are not generally awarded for such preparation and attendances. Thus, while I accept that reasonable costs were \$3,856.85 as this was the sum granted by the Legal Services Agency, there needs to be discounts for mediation and the preliminary investigation meeting.

[9] I assess the appropriate sum to be \$2,000, taking into account mediation, the investigation into exceptional circumstances and the time spent on claims where Ms Rarere was unsuccessful.

I therefore order the respondent, Electrotech Controls Limited, to pay to the applicant, Wanita Anne Rarere, \$2,000 in costs.

G J Wood
Member of the Employment Relations Authority