



New Zealand Employment Relations Authority Decisions

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Rew v Fare Café Limited [2011] NZERA 206; [2011] NZERA Auckland 162 (20 April 2011)

Last Updated: 9 June 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2011] NZERA Auckland 162 5163767

BETWEEN MARIA REW

Applicant

AND FARE CAFE LIMITED

Respondent

Member of Authority: Representatives:

Submissions received:

Yvonne Oldfield

David Flaws for Applicant Bill Guest for Respondent

25 July 2010 from Respondent

5 February 2011 from Applicant

Determination:

20 April 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] Ms Dew's substantive employment relationship problem was the subject of a determination dated 14 January 2011. In that determination her claim (a disadvantage grievance relating to allegations of bullying) was dismissed.

[2] Without waiting to find out what the outcome of the substantive investigation would be, the respondent had included a "statement for reimbursement of Costs from the Applicant" in its written submissions on the substantive matter and had argued:

"We respectfully recommend to the Authority that they dismiss Maria Rew's claim and that the Authority accept the following respondent's statement for costs

[3] Once the substantive determination was available Mr Flaws responded with a submission setting out Ms Rew's views on costs. He indicated that Ms Rew had been unwell for some time and was receiving counselling and medical care. He said that although she was working:

"at a level her health allows...her income frequently falls short of her outgoings and she relies on the charity of family and friends to sustain herself."

[4] A payslip was attached to demonstrate that Ms Rew's net income was just a little over \$300.00 per week.

[5] Relying on the fact that the Authority had a discretion in respect to costs he suggested that this was a case where in equity and good conscience the Authority should decline to award costs. Alternatively, should the Authority decide to award costs, it

should do so at a level commensurate with the applicant's ability to pay.

Determination

[6] The respondent's statement set out the costs as follows:

Loss of income	\$2,812.50 GST incl
Advocate's costs for preparation of briefs and making closing submissions on the respondent's behalf	\$4,050.00 GST incl
Witness expenses	\$168.75 GST incl
Mileage 140 km @ 70 cents/kilometre	\$98.00
Disbursements, postage	\$30.00
Cumulative total	\$7,159.25

[7] The investigation meeting in respect of this matter was completed within a day. The issues were relatively confined and extensive preparation was not required. I am satisfied that the respondent, as the successful party, should receive a contribution to its costs in line with awards in other similar matters before the Authority. I accept however that the applicant's limited ability to pay an award of costs is a relevant matter which must be taken into consideration. Balancing these factors I conclude that \$1,500.00 is a reasonable contribution to costs.

[8] The applicant, Ms Rew, is therefore ordered to pay to the respondent company, Fare Cafe Limited, the sum of \$1,500.00 as contribution to its costs.

Yvonne Oldfield

Member of the Employment Relations Authority

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