

Determination Number; WA 53/05

File Number: WEA 292/04

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN	Ahlam Riyad (applicant)
AND	Erol Gurleyen (first respondent)
AND	Mavi Limited (second respondent)
REPRESENTATIVES	Paul McBride & Melanie Brewer for the applicant Mr Gurleyen represented himself; the second respondent advised it was taking no steps in these proceedings
MEMBER OF THE AUTHORITY	Denis Asher
SUBMISSIONS RECEIVED	25 January, 14 February & 30 March 2005
DATE OF DETERMINATION	31 March 2005

DETERMINATION OF AUTHORITY: Costs

Employment Relationship Problem

1. I earlier found in favour of Ms Ahlam Riyad's claim that she had been unjustifiably dismissed by the respondents – refer determination WA 179/04, dated 23 December 2004. Costs were reserved.

Submissions: the applicant's position

2. In a submission received on 25 January 2005 counsel for the applicant advised that their efforts to progress their client's claims with the respondent had gone unanswered. A letter addressed to the second respondent at its registered office was returned unopened.
3. Ms Riyad is legally aided. The initial grant was \$2,080 or 16 hours @ 130 GHR for fees, \$150 for office disbursements of server fees and \$70 filing fees. An extension of the grant is pending given the unforeseen complications of this application, including the late joinder of a third party. Time actually spent at legal aid hourly rates totalled 55.4 hours. While a challenge to the Authority's decision has been filed costs should be fixed. An award of costs and disbursements of \$2,206.25 is sought.
4. Costs principles are well established. It is submitted that in all the circumstances the full amount of the applicant's current legal aid grant plus any additional sum in respect of a pending extension of that grant should be awarded.

Respondents' positions

5. In written advice received on 14 February Mr Gurleyen refers to both the Authority's recent correspondence and to his previous statements. He says in 2002 he severed all connections with the business where Ms Riyad worked and has not employed anybody ever since. Mr Gurleyen denies ever interviewing or employing the applicant and says he was not in New Zealand at the time. Mr Gurleyen says he is not responsible for any costs "*as this has nothing to do with me*".
6. As the intituling makes clear, advice from counsel then acting for the second respondent is that it has been instructed to take no further steps in these proceedings and accordingly its client is in the hands of the Authority in respect of an appropriate award of costs.

Discussion and Findings

7. I am satisfied that in this instance there is every reason for costs to follow the event.
8. The issue of whether Mr Gurleyen was or was not the employer is a matter now before the Employment Court by way of a challenge.
9. As my good faith report of 25 February 2005 makes clear, I am satisfied that both respondents were aware of Ms Riyad's employment relationship problem from before it was first filed in the Authority in August 2004.
10. Because of their conduct I am satisfied the respondents acted in bad faith toward Ms Riyad.
11. Communication with the respondent parties has only occurred following the issuing of the Authority's 23 December 2004 substantive determination.
12. Mr Gurleyen has admitted to an Authority support officer that he knew of the problem but acted on advice and ignored it.
13. I therefore accept the submissions on the applicant's behalf that the respondents' conduct has unnecessarily added to Ms Riyad's costs, including adjournment and personal service on the respondents.
14. I am also satisfied that the initial amount claimed on the applicant's behalf is, consistent with the well-known principles applying to costs, entirely realistic. I am satisfied the monies claimed should be paid in full on an interim basis and that leave should be reserved to the applicant to resubmit a final costs claim once Ms Riyad has an answer to her claim for extended legal aid.

Determination

15. For the reasons set out above I find in favour of the applicant, Ahlam Riyad's, preliminary claim that she is entitled to recover from the respondents, Erol Gurleyen

and Mavi Limited, a reasonable contribution toward the legal aid granted her thus far. Accordingly, I direct the respondents to pay to Mr Riyad the sum of \$2,206.25 (two thousand and two hundred and six dollars and twenty-five cents). Leave is reserved to the applicant to pursue a further costs award in the event that she succeeds with her current application for an extension of legal aid.

Denis Asher

Member of Employment Relations Authority