

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Brian Saipe (Applicant)  
**AND** Waitakere Enterprise Trust Board (Respondent)  
**REPRESENTATIVES** Brian Saipe In person  
Peter Craighead, Counsel for Respondent  
**MEMBER OF AUTHORITY** Vicki Campbell  
**SUBMISSIONS RECEIVED** 25 October 2005  
3 November 2005  
30 November 2005  
16 December 2005  
**DATE OF DETERMINATION** 22 December 2005

DETERMINATION OF THE AUTHORITY ON COSTS

[1] In a determination dated 27 September 2005 I held that as Mr Saipe was unrepresented no legal costs would be awarded and encouraged the parties to discuss and resolve the matter of costs associated with disbursements incurred by Mr Saipe relating to photocopying and his filing fee.

[2] The parties have been unable to resolve the issue and I have subsequently received memorandum from both parties relating to this issue. In his submissions Mr Saipe has advised the Authority that he was in receipt of legal advice prior to the Authority investigation meeting. Mr Saipe has provided me with copies of invoices for that legal advice totalling \$9,565.89 and for disbursements of \$2,377.60.

[3] In response, the respondent submitted that the Authority lacks jurisdiction to award legal costs as that matter was finally determined in the substantive determination issued by the Authority on 27 September 2005. I do not accept that submission. An assumption as to Mr Saipe's legal costs was made by the Authority in the determination and that assumption has proven to be incorrect.

[4] The determination issued on 27 September 2005 was a determination of the substantive matter and not of costs. Consideration of costs comes later and separately. The successful party is

entitled to seek a contribution to the costs that party incurred in bringing the litigation, reflecting the practical reality that the costs of litigation eat into any benefits obtained. The entitlement amounts to a separate and additional claim to the substantive matter already dealt with. I am satisfied that Mr Saipe is entitled to receive an order for a reasonable contribution towards his legal costs and disbursements.

[5] I have considered the submissions of both parties in relation to the invoices produced by Mr Saipe, and I am satisfied that a percentage of the legal costs incurred include costs associated with preparation for and attendance at mediation. The parties attended mediation on 28 October 2004. Mr Saipe has advised the Authority that he was not charged any legal fees beyond 9 November 2004.

[6] Mr Saipe submits that the Authority does not need to distinguish between costs related to mediation and those costs associated with the Authorities investigation. I disagree with Mr Saipe on this point.

[7] The Authority can only commence an investigation when a matter is properly before it. A matter is properly before the Authority when the required statement has been filed and the fee paid. The Act provides for proceedings before the Authority to be suspended when parties are directed to attend mediation (s159(2) Employment Relations Act 2000). In this case the parties agreed to attend mediation. At that time the proceedings were suspended in the Authority. Once suspended, the Authority is unable to commence its investigation until after mediation has been completed.

[8] Mediations are held in a confidential forum and the Authority is prohibited from making any enquiries into the mediation (s.148 Employment Relations Act 2000). On that basis it is not possible for the Authority to enquire as to the appropriateness or otherwise of the costs associated with mediation services.

[9] I am satisfied that costs associated with mediation are not available to be included in the calculation for contribution of costs. I have examined the two invoices produced by Mr Saipe. The first invoice is dated 28 November 2003 and pre-dates the filing of the Statement of Problem and mediation. The invoice refers to preparation and filing of an application to the Employment Relations Authority, however, the Authority records show that Mr Saipe did not actually file his statement of problem until 29 June 2004. The second invoice is dated 9 November 2004 and is stated to include preparation and research for, and attendance at, mediation.

[10] In coming to my conclusions regarding a reasonable contribution to legal costs I have taken into account that the invoices provided by Mr Saipe include costs associated with mediation.

[11] Mr Saipe submitted that he should be reimbursed for his own time for attendance at the investigation meeting. The general principle is that an unrepresented litigant is not entitled to be reimbursed legal costs for the litigant's own time (*Health Technology Limited v MacDonald* [1993] 2 ERNZ 842). Mr Saipe will not be reimbursed for his own time for attendance at the investigation meeting.

[12] Included in Mr Saipe's claim for disbursements is an amount for travel and parking. I am not inclined to order any reimbursement for costs incurred in travel, however, I am satisfied that the parking costs are a disbursement which Mr Saipe is entitled to recover.

[13] In determining a reasonable amount of an award for costs, I have had regard to the general principals, the submissions I have received from the parties, and the attendances at the investigation meeting.

[14] In all the circumstances and taking into account the principles relating to costs as set out in *New Zealand Airline Pilots Association v The Registrar of Unions* [1989] 2 NZILR 550 and *Reid v Fire Services Commission* [1995] 2 ERNZ 38, and *BPO Ltd v da Cruz*, unreported, 9 December 2005, AC 2A/05, the respondent is ordered to pay to the applicant \$2,500 as a contribution to his legal costs and \$1,488.56 for disbursements incurred.

Vicki Campbell  
Member of Employment Relations Authority