

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 235A/08
5113815

BETWEEN ELI SALANT
 Applicant/Respondent to
 counterclaim

AND HOSPITALITY SERVICES
 LTD Respondent/Applicant in
 counterclaim

Member of Authority: Yvonne Oldfield

Submissions received: No submissions received from Mr Salant
 31 July from Hospitality Services Ltd

Determination: 11 November 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 7 July 2008 I determined the counterclaim by Hospitality Services Ltd by making an order in its favour for damages of \$22,457.79. The determination also recorded at paragraph [8] that Mr Salant's original application for compliance "*remains at large and its investigation is suspended until further notice from him.*"

[2] Hospitality Services Ltd now seeks costs in relation to the successful counterclaim. Nothing more has been heard from Mr Salant, either in relation to his intentions regarding his claim or in response to costs submissions lodged on behalf of Hospitality Services Ltd.

[3] Since Mr Salant has not withdrawn his original claim it remains open to him to pursue it; that is to say, the wider employment relationship problem has not been resolved. In such circumstances the Authority's usual practice would be to reserve costs until all issues between the parties had been disposed of. However, almost a year has now elapsed since the matter was first filed and Mr Salant has given no indication

that he wishes to return to New Zealand to pursue his claim. I therefore consider it appropriate to determine costs in relation to the counterclaim without further delay.

[4] Hospitality Services Ltd advises through Counsel that its actual costs in this matter are \$8,500.00 to date. It seeks a contribution of \$2,500.00 to those costs.

[5] As indicated already, the outcome of Mr Salant's original claim remains to be determined. If and when it is determined, costs will follow the event. This determination therefore deals only with costs relating to the pursuit, by Hospitality Services Ltd, of its counterclaim.

[6] Hospitality Services Ltd has not identified what portion of its costs relate exclusively to the counterclaim. For this reason I fall back on using a "tariff based" approach to determining costs. The investigation meeting in respect of the counter claim took less than half a day. Minimal preparation was required and as the determination records, most of the material evidence was not in dispute. A modest award of costs is therefore in order.

[7] After having had regard to awards of costs in respect of matters of a similar level of complexity I conclude that an appropriate contribution to costs would be \$1,000.00.

[8] Mr Salant is therefore ordered to pay to Hospitality Services Ltd the sum of \$1,000.00 as contribution to costs incurred by Hospitality Services Ltd in relation to the pursuit of its counterclaim against him.

Yvonne Oldfield

Member of the Employment Relations Authority