

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 371
5291179

BETWEEN MARGARET SANDERS
Applicant

AND INGHAM MOTOR
HOLDINGS LIMITED
Respondent

Member of Authority: Yvonne Oldfield

Representatives: Philip Skelton for Applicant
Carl Blake for Respondent

Submissions received: 22 August 2011 from Applicant
16 August 2011 from Respondent

Determination: 24 August 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 25 July 2011 it was held that Mrs Sanders's dismissal was genuinely for reasons of redundancy. Fault was found with only one aspect of the respondent's process and that was in respect of a failure to provide Mrs Sanders with access to all information relevant to the decision to dismiss her. She was awarded \$5,000.00 compensation in respect of the resulting disadvantage grievance. All her other claims were dismissed.

[2] The substantive determination reserved costs on the basis that any application for costs should be made within 28 days of the date of the decision.

[3] The respondent's application, supported by submissions, was lodged first. Ingham Motors Limited sought costs because:

“the applicant failed to successfully prosecute any of the claims that she brought against the Company...”

The Authority found only one flaw in one aspect of the applicant’s claim (which was not pleaded by the applicant) and ...rejected the remainder of her claims.”

[4] It was argued for the respondent that the Authority made a number of factual findings in the respondent’s favour with the result that it successfully defended claims for remedies totalling \$146,000.00. In these circumstances it was argued that:

“an order should be made that the applicant contribute towards its costs, given the number of claims the applicant lost.”

[5] Noting that the respondent incurred costs in excess of \$30,000.00 and that the investigation meeting ran for two days (one with a 7.00pm finish) the company sought a contribution to costs in the sum of \$8,000.00.

[6] Mrs Sanders also seeks costs. In submissions in support of her application Mr Skelton noted that there had been no Calderbank offer in this case. It was argued that costs should follow the event especially given the Authority’s finding that:

“the lack of feedback led directly to Mrs Sanders’ loss of trust and to her lack of comprehension of what happened.”

[7] He advised that her costs were also *“in excess of \$30,000.00”* and that she sought a contribution of \$6,000.00.

Determination

[8] Both parties have made persuasive arguments in respect of costs. In the particular circumstances of this case I conclude that it is an appropriate exercise of the Authority’s discretion in respect of costs for costs lie where they fall.

[9] I make no order for costs.

Yvonne Oldfield

Member of the Employment Relations Authority