

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Geraldine Schnauer (Applicant)  
**AND** Independent Liquor (NZ) Ltd (Respondent)  
**REPRESENTATIVES** Don McKinnon for Applicant  
Max McGowan for Respondent  
**MEMBER OF AUTHORITY** Y S Oldfield  
**SUBMISSIONS** 8 March 2007  
**DATE OF DETERMINATION** 11 April 2007

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] In a determination dated 20 February 2007 I concluded that the applicant had been unjustifiably dismissed. The parties have been unable to agree the issue of costs and the applicant has now made submissions in support of an application for costs. The respondent has chosen not to make a submission in response but has advised through Mr McGowan that the Authority should refer to correspondence between it and the applicant's representative in which the respondent records its view that \$2,000.00 would be a reasonable contribution to costs. A copy of this correspondence has already been provided to the Authority.

[2] In submissions Mr McKinnon has advised that the applicant's costs (from mediation until the filing of written submissions) were \$13,775.00 plus GST. He notes that at Counsel's normal charge out rate the fee would have been significantly higher however a significant amount of time has been written off. On Ms Schnauer's behalf, he says that the costs incurred were more than reasonable. He also says that the respondent "*is a company of significant wealth,*" ability to pay is not a factor and (given the award made in the Authority's determination) there is potential for the award to be nugatory.

[3] Mr McKinnon seeks a full indemnity of \$13,775.00 however he says that:

*"the Authority's tariff range is up to \$3,000.00 a day...for every day of hearing time there are two days of preparation. That being so, in the unlikely event that a full indemnity is not provided, then it is submitted that costs of \$9,000.00 would be consistent with established principle."*

**Determination**

[4] This was not a complex matter, legally or factually. There were no significant credibility issues and the investigation meeting took up only one day. Ms Schnauer brought only one other witness to give evidence on her behalf, and his evidence was not extensive. I see no reason, in this case, for there to have been a need for a higher than usual level of preparation.

[5] A range of different methods has been applied in determining what costs are reasonable in relation to Authority investigations. Mr McKinnon has referred me to the rule of thumb that for every day in an investigation meeting, at least two days of preparation is usually required. I accept this as a reasonable guide in cases which are straightforward, as this one was, and

use it as my starting point in assessing a reasonable level of costs. (I note that the "tariff based approach" is an alternative method of addressing costs; I do not propose to mix the two in the way proposed in submissions.)

[6] The investigation meeting took up approximately seven hours. Applying the rule of thumb just mentioned, a time allowance of a further 14 would be reasonable, giving, in round figures a total of 20 hours for professional attendance. Mr McKinnon did not advise an hourly rate although he did advise that "*less experienced counsel*" assisted in the work on the case. To reflect this I apply a nominal hourly rate of \$300.00, being a rate somewhat lower than I would expect for a relatively senior practitioner such as Mr McKinnon himself.

[7] Twenty hours at \$300.00 per hour gives a figure of \$6,000.00 for costs. A further principle in setting costs has it that a two-thirds contribution is reasonable. Applying this principle, I am satisfied that Ms Schnauer should receive a contribution of \$4,000.00 to her costs.

**[8] The respondent is therefore ordered to pay to Ms Schnauer the sum of \$4,000.00 as a contribution to her legal costs.**

Yvonne Oldfield  
Member of Employment Relations Authority