

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Alison Schneller (Applicant)
AND Ranworth Healthcare Limited (Respondent)
REPRESENTATIVES Michael O'Brien, for Applicant
Tony Drake, for Respondent
MEMBER OF AUTHORITY Vicki Campbell
SUBMISSIONS RECEIVED 21 October 2005 from Respondent
21 January 2006 from Applicant
DATE OF DETERMINATION 13 March 2006

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 27 October 2005 I found that Ms Schneller did not have a personal grievance. I invited the parties to resolve the question of costs between them. They have been unable to do so. Ranworth Healthcare Limited now seek a determination on costs.

[2] The purpose of an award of costs is to compensate to a reasonable degree a party who has been put to expense by being required to assert or defend a right. It is conventional that costs are to follow the event. Ranworth Healthcare Limited is the successful party. It is entitled to an award of costs.

[3] The Employment Court has held that the following principles are appropriate where the Authority is exercising its discretion in relation to costs:

- There is a discretion as to whether costs should be awarded and what amount;
- The discretion is to be exercised in accordance with principle and not arbitrarily;
- The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority;
- Equity and good conscience is to be considered on a case by case basis;

- Costs are not to be used as a punishment or as an expression of disapproval of an unsuccessful party's conduct although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award;
- It is open to the Authority to consider whether all or any of the parties costs were unnecessary or unreasonable;
- That costs generally follow the event;
- That without prejudice offers can be taken into account;
- That awards will be modest;
- That frequently costs are judged against a notional daily rate;
- The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[4] It was said in *Harwod v Next Homes Limited*, unreported AC70/03, 19 December 2003, Travis J, and *Graham v Airways Corporation of New Zealand Ltd*, unreported, AA39/04, 28 January 2004, Member Dumbleton, that average awards of costs fall between \$1,000 and \$1,500 for a one-day investigation meeting by the Authority. There was agreement too in those decisions of a recent trend towards a higher figure of between \$2,000 and \$3,000.

[5] On 10 August 2005 Ranworth Healthcare made an calderbank offer to Ms Schneller before it proceeded to an investigation meeting. The calderbank letter set out the respondents response to Ms Schneller's statement of problem in an effort to persuade her to discontinue the proceedings. The offer to settle the entire matter was for a payment of \$2,500 which included a contribution to costs incurred by Ms Schneller to date. A period of 16 days was provided for Ms Schneller to consider the offer. Ms Schneller did not accept the offer.

[6] Ranworth Healthcare Limited seek an award of \$14,967.50 (including \$402.50 disbursements) being the full costs incurred following the 10 August 2005 calderbank letter. No invoices have been provided to support the submission that the costs stated were actually incurred.

[7] In determining a reasonable amount of an award for costs I have had regard for the Calderbank offer made by Ranworth Healthcare Limited to resolve the matter. The offer was based on a realistic assessment of Ms Schneller's likelihood of success and the minimal costs that could have been expected to have been incurred at that point.

[8] I have also had regard for the general principals and the submissions I have received from the parties including the submission that Ms Schneller is currently unemployed. Taking all those

circumstances into account, the applicant is ordered to pay the respondent \$402.50 towards disbursements and \$2,500 towards legal costs.

Vicki Campbell
Member of Employment Relations Authority