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Sharma v Auckland District Health Board [2011] NZERA 2; [2011] NZERA Auckland 2 (5 January 2011)

Last Updated: 19 January 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2011] NZERA Auckland 2 5164854

BETWEEN SHARMILA SHARMA

Applicant

AND AUCKLAND DISTRICT

HEALTH BOARD

Yvonne Oldfield

Mr Kumar for Applicant Anthony Drake and Nura Taefi for Respondent

27 September 2010 from Respondent

5 January 2011

Respondent

Member of Authority: Representatives:

Submissions received: Determination:

COSTS DETERMINATION OF THE AUTHORITY

[1] This matter was the subject of a determination issued 23 August 2010. None of Ms Sharma's claims against the respondent were successful. Costs were reserved with the proviso that any request for costs was to be made within 28 days of the date of the determination.

[2] On 28 September the respondent lodged a memorandum of costs and requested that the Authority determine the matter. No reference was made in the memorandum to the fact that the application was late.

[3] A copy of the memorandum was forwarded to the applicant on 28 September and her response sought within 7 days. No response has been received despite, as I understand it, the Authority support officer having reminded Ms Sharma of her opportunity to do so.

[4] In the memorandum Counsel for the respondent advises that the respondent incurred costs totalling \$24,402.00 plus GST and disbursements for the period between 10 January 2010 (after the application was lodged) and 29 March 2010, when the matter was concluded in a one day investigation meeting.

[5] The respondent says the following matters are relevant to the question of

costs:

- i. the applicant's conduct in failing to provide proper details and particulars of her claim added to the respondent's costs, as counsel had to prepare more material than would otherwise have been required, and
- ii. the respondent made attempts to settle the matter after mediation and prior to the investigation meeting but the applicant did not respond.

[6] The respondent submits that a reasonable contribution to the respondent's legal costs is appropriate and seeks "a daily rate of \$4,000.00."

Determination

[7] The applicant has not availed herself of the opportunity to respond to the respondent's application for costs. In these circumstances I consider the Authority bound to consider and determine the application notwithstanding that it was several days late.

[8] The respondent's assertions about the applicant's claim are correct. Even allowing for the fact that Ms Sharma was not professionally assisted (her husband having taken on the role of her support person and advocate) it must be acknowledged that her claim was not fully particularised and that additional matters were raised as late as the investigation meeting. This made it difficult for the Authority, and the respondent, to be clear about exactly what her concerns were.

[9] Although the level of costs incurred was high (given the small number of witnesses and the relative lack of complexity in the case) the contribution sought is not excessive. I am satisfied that it is appropriate for the Authority to order a contribution which is within the normal range for a straightforward one day personal grievance investigation.

[10] I therefore order the applicant to pay to the respondent the sum of \$2,000.00, plus disbursements, as contribution to costs.

Yvonne Oldfield

Member of the Employment Relations Authority

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