

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Joanne Louise Skinner (Applicant)
AND Stayinfront (Asia Pacific) Limited (Respondent)
REPRESENTATIVES Matthew Young, Advocate for Applicant
Rob Towner, Counsel for Respondent
MEMBER OF AUTHORITY Marija Urlich
SUBMISSIONS RECEIVED 7 July and 25 August 2005
DATE OF DETERMINATION 13 October 2005

DETERMINATION OF THE AUTHORITY

Application for costs

[1] Following a half day investigation meeting, I found, in a determination dated 4 May 2005, the parties had entered a binding settlement agreement and that, on that basis, the Authority did not have jurisdiction to hear Ms Skinner's claim of unjustified dismissal.

[2] The parties were invited to resolve costs between them and in the event such attempts were unsuccessful leave was given for application to be made to the Authority to determine costs. The parties have not been able to agree the issue of costs and have filed submissions in the Authority setting out their respective positions.

Costs in the Authority

[3] The Authority has a discretion to award costs and expenses as it thinks reasonable¹. The usual principles and rules applicable to costs' determinations in a traditional setting are relevant to the Authority's exercise of its discretion, though such principles must be seen in light of the investigative nature of the Authority process and the objects of the Act. In exercising this discretion the Authority must take into account relevant issues and exclude irrelevant issues from its consideration.

[4] Recent costs tables compiled by the Department of Labour show most costs awards in the Authority range between \$2000 and \$2500 for a one-day hearing.

The parties' submissions

[5] For Stayinfront, Mr Towner submits:
(i) the settlement agreement entered by the parties in April 2002 was upheld by the

¹ Schedule 2 clause 15 Employment Relations Act 2000

Authority as binding;

- (ii) Ms Skinner's statement of problem filed in the Authority did not disclose the existence of this settlement agreement;
- (iii) Ms Skinner's claim was frivolous and abused the Authority's jurisdiction to investigate employment relationship problems;
- (iv) the total costs incurred by Stayinfront amount to \$58,678.72;
- (v) these costs were reasonable given the requirement that US attorneys be involved;
- (vi) an award of full costs is sought; Ms Skinner agreed to enter the terms of settlement, the claim that a residual right to bring a personal grievance existed in such circumstances was vexatious, the Authority's policy of awarding modest costs is not applicable because these are costs that should never have been incurred and Ms Skinner had been on notice since June 2004 that the respondent would seek an award of full costs against her;
- (vii) in the alternative, Stayinfront seeks a substantial award costs of \$40,000, representing two-thirds of the costs incurred.

[6] For Ms Skinner, Mr Young submits:

- (i) the investigation did not concern the substantive issues and ran for ½ a day;
- (ii) Ms Skinner's claim was not frivolous or vexatious because it did not relate to matters in her contemplation at the time of settlement;
- (iii) this is not a situation where full costs should be awarded;
- (iv) Ms Skinner's ability to pay any costs award is limited; and
- (v) a reasonable costs award would be between \$1000 and \$3000.

Determination

[7] Ms Skinner was on notice from an early stage in proceedings that Stayinfront would seek to recover full costs. Stayinfront was the successful party and it is usual that costs should follow the event. The costs incurred are high. To a degree this was foreseeable; Stayinfront is a US based company, the negotiations leading up to the settlement agreement were conducted between New Zealand and the US and the enforceability of the settlement agreement was the main issue.

[8] The central argument advanced in support of Ms Skinner's claim was based on section 283 of the Act. This argument proposed a major shift in the way this institution operates; that settlements entered by parties do not override the right to bring a personal grievance. Detailed submissions were not advanced in support of this novel argument. For the reasons set out in the determination I did not agree with this submission.

[9] Taking into account the submissions made and the principles for awarding costs in this jurisdiction, Ms Skinner is ordered to contribute to Stayinfront's costs to the sum of \$6,000. Ms Skinner is also required to contribute to expenses incurred by Stayinfront in convening the videoconference to the sum of \$500. The intention in making such an award should not be seen as either punitive or illusory; I accept Ms Skinner's financial circumstances are difficult and there is little point making an award against her which she does not have the means to meet.

Marija Urlich
Member of Employment Relations Authority