

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2011] NZERA Auckland 446
5309303**

BETWEEN NAOMI SMITH
 Applicant

AND CAPRIMA CUISINE LTD t/a
 GRILLERS RESTAURANT
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Alex Hope, Counsel for Applicant
 Nannette Bolstad, Advocate for Respondent

Costs Submissions 28 September 2011 from Applicant
 None from Respondent

Determination: 14 October 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 24 August 2011 ([2011] NZERA Auckland 370), the Authority found that the Applicant, Ms Naomi Smith, had been unjustifiably dismissed and unjustifiably disadvantaged in her employment by the Respondent, Caprima Cuisine Limited.

[2] In that determination costs were reserved in the hope that the parties would be able to settle this issue between themselves. The relevant paragraph is [142] in which the following directions were given:

Costs are reserved. I encourage the parties to resolve the issues of costs themselves. If they are not able to do so, the Applicant may lodge and serve a memorandum as to costs within 28 days of the date of this determination. The Respondent will have 14 days from the date of service to lodge a reply memorandum. No application for costs will be considered outside this time frame without prior leave.

[3] In accordance with the directions of the Authority, the last day for any memorandum as to costs to be lodged and served by Ms Smith was on 21 September 2011.

[4] Mr Hope, counsel for Ms Smith, lodged and served a memorandum as to costs on 28 September 2011.

[5] Ms Bolstad, for the Respondent, emailed the Authority on 28 September 2011 enquiring whether leave to extend the period of time for costs submissions had been received by the Authority.

[6] The Authority confirmed that no application for leave to extend the time period within which the costs application had to be made had been granted, or even sought.

[7] On 5 October 2011 the Authority received a memorandum from Mr Hope seeking leave to file a costs memorandum out of time. In that memorandum Mr Hope explained the late filing of the costs application as being due to a combination of the Respondent failing to respond to a proposal regarding the costs, and his own omission to note the due date by which the costs submissions were due.

[8] Mr Hope explained that he completed the submissions which he had earlier prepared on 27 September 2011 and had sent them to the Authority. However Mr Hope had failed to bring his omission to file in accordance with the Authority's directions to the Authority's attention as soon as he became aware of it on 27 September 2011, and no application for leave to file out of time was made to the Authority until 5 October 2011. Significantly this was only after the Authority had advised the parties on 28 September 2011 that no application to file out of time had been received.

[9] I do not accept that the application for leave to extend was made in a timely manner. The Authority will usually be amenable to extending the time in which matters are to be actioned according to its directions, providing that the request is made before the deadline is reached.

[10] After 21 September 2011 when nothing more had been heard from the parties, the Authority's investigation closed pursuant to the directions given by it. These directions had been clear and precise and there is no suggestion that they were not so.

Determination

[11] In the circumstances, I decline to consider the Applicant's application for costs.

Eleanor Robinson
Member of the Employment Relations Authority

