

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Shaun Smith (Applicant)
AND Nova Institute of Education NZ Ltd (Respondent)
REPRESENTATIVES Benn Andrews, Counsel for Applicant
Mark Ryan, Counsel for Respondent
MEMBER OF AUTHORITY Marija Urlich
INVESTIGATION MEETING 7 April 2004
DATE OF DETERMINATION 20 January 2005

COSTS DETERMINATION OF THE AUTHORITY

- [1] In my determination of 5 July 2004, I found that the applicant had a personal grievance that he had been unjustifiably dismissed. I awarded remedies to Mr Smith and reserved the issue of costs.
- [2] I have received costs submission from the parties. I understand from these the parties have attempted without success to resolve the issue of costs themselves and now seek the Authority's determination on this issue.
- [3] On Mr Smith's behalf Ms Knight seeks the sum of \$8,757.09 which represents 75% of actual costs incurred including GST and disbursements. Ms Knight's submission that such a contribution to Mr Smith's costs is reasonable because he was successful in his claim and the actual costs were reasonably incurred.
- [4] For Nova Mr Ryan submits the Authority would only be justified in making an award of minimal costs to Mr Smith. Mr Ryan relies on the following grounds; the matter was not complex, the investigation meeting was not lengthy, any award of costs should be proportionate to the damages awarded, Nova is in an impecunious position and a costs award would cause further hardship.
- [5] I am of the view this is an appropriate case for an award of costs. The case was important to both parties but was not a complex matter and the investigation meeting was concluded comfortably within a day with written submission provided subsequently. In all the circumstances and taking into account the principles relating to cost as set out in *New Zealand Airline Pilots Association v The Registrar of Unions* [1989] 2 NZILR 550 and *Reid v Fire Services Commission* [1995] 2 ERNZ 38 I am of view that an appropriate award of costs including disbursements is \$2000.00.

[6] I order Nova Institute of Education NZ Limited to pay Shaun Smith the sum of \$2000.00 as a contribution to his costs and disbursements.

Marija Urlich
Member of Employment Relations Authority