

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Taryn Catherine Stevens (Applicant)  
**AND** Kerry Williams trading as Williams & Co (Respondent)  
**REPRESENTATIVES** Mark Henderson, Advocate for Applicant  
Nick Rout, Counsel for Respondent  
**MEMBER OF AUTHORITY** James Crichton  
**SUBMISSIONS RECEIVED** 13 October 2006  
27 November 2006  
**DATE OF DETERMINATION** 11 December 2006

**COSTS DETERMINATION OF THE AUTHORITY**

*The application for costs*

[1] By determination dated 12 September 2006, the Authority resolved the employment relationship problem between these parties by determining that Ms Stevens had a personal grievance by reason of an unjustified dismissal. Ms Stevens' entitlement to compensation and lost wages was reduced by a figure of 60% on the grounds of her contribution.

[2] Costs were reserved.

*The claim for costs*

[3] The successful party, Ms Stevens, through her counsel, seeks a contribution to her costs in the sum of \$5,900 together with disbursements of \$89.80. The figure of \$5,900 represents the total amount of costs rendered by Ms Stevens' counsel less an allowance for mediation. The claimed amount does not include any allowance for a modest amount of costs in the sum of \$817.50 incurred by Ms Stevens in respect of work done by her previous counsel.

[4] In effect, Ms Stevens is seeking almost full solicitor/client costs. A grant of costs of that magnitude would be unusual indeed. It may be that Ms Stevens is influenced to make such a claim on the basis that she was previously in receipt of a grant of legal aid. In submissions on the costs matter, her counsel advises that that grant of aid was withdrawn on 21 September 2006 being after the investigation meeting and indeed after the determination issued. I note for the sake of completeness that so far as I can tell from the file, the Authority was never advised (as the Legal Services Act requires) that Ms Stevens was in receipt of legal aid and presumably if the Authority was not advised, then the respondent was also not advised. Nothing turns on that failure now, and it

is understandable given the change in Ms Stevens' representation, but despite the difficulty that her having to fund her own action may place on her, that of itself does not entitle her to an expectation of full solicitor/client costs.

[5] Mr Williams, through his counsel, encourages me in the view that Ms Stevens' costs were unnecessarily increased as a consequence of initially engaging counsel from a firm which included one of the respondent's witnesses and it is certainly the position that there were a number of exchanges between counsel and a telephone conference with the Authority at which the conflict of interest was discussed. I accept this was a factor which it is proper for me to take into account.

[6] Mr Williams also urges on me the proposition that there was, in effect, an unreasonable delay of four months when Ms Stevens' claim was not actively prosecuted at all and it is suggested that this delay required Mr Williams' counsel to refamiliarise himself with the file after having believed that the matter was no longer being persevered with. I think that if this matter had any effect on the total costs incurred in this matter, it can only have been on the costs incurred by Mr Williams and then only to a somewhat limited extent. As the issue is whether Mr Williams should contribute to the costs of Ms Stevens, and if so to what extent, the impact of Mr Williams' own costs is not relevant.

[7] Mr Rout, for Mr Williams, urges on me the proposition that I should take into account, in awarding costs, the 60% contribution which I found Ms Stevens liable for in respect of the circumstances giving rise to her personal grievance. I do not accept this submission. The effect of applying such a proposition would be to create a kind of double jeopardy situation and, in my opinion, that is unfair. In any event, had Ms Stevens not persevered with her claim, then, as her counsel says in his submissions, she may not have received payment of the outstanding wages and holiday pay which was due and owing to her and which Mr Williams paid to her immediately prior to the investigation meeting.

### ***The legal principles***

[8] Mr Williams, in his submissions, refers to the leading case on costs in the Authority, *PBO Ltd v. da Cruz* [2005] 1 ERNZ 808 which sets out the relevant principles.

[9] In that decision, the Full Court details the basic tenets which the Authority has applied to costs determinations since its inception and then indicates that those precepts are *appropriate* and *consistent* with the functions and powers of the Authority.

[10] The Court also observes in the same decision that the *tariff based* approach adopted by the Authority is not *wrong in principle* provided it is not applied rigidly and *without regard to the particular characteristics of the case*.

### ***Determination***

[11] This was a matter dealt with by the Authority in two days but the investigation meeting, in terms of elapsed time, took less than an ordinary working day. As I have indicated already, I do not think there is any basis on which Ms Stevens can reasonably expect the bulk of her actual costs to be met by Mr Williams. That would place her in a more advantageous position than the vast bulk of other litigants who have their employment relationship problems investigated by the Authority and are successful in the determination that follows.

[12] In the normal course of events, an appropriate contribution to the successful party's costs in a matter of this kind ought to be perhaps \$2,500 but I rebate that sum by a figure of \$500 to take account of the points made by Mr Rout that I accept are appropriate in considering the quantum of costs.

[13] Mr Williams will pay Ms Stevens the sum of \$2,000 as a contribution to her legal costs inclusive of the disbursements which she separately identified.

James Crichton  
Member of Employment Relations Authority