

[4] Conversely, Ms Te Ahuru, through counsel, essentially advances the proposition that Ms Te Ahuru's financial circumstances ought to determine the Authority's response to the costs application.

[5] Ms Te Ahuru was an applicant for legal aid in relation to the personal grievance but her application was unsuccessful notwithstanding she was herself unemployed. Of course, the legal aid system takes account of the income of a partner and it appears that was the position in this case.

[6] The applicant's financial position has, if anything, further deteriorated since the investigation meeting conducted by the Authority. At the time of the hearing, Ms Te Ahuru had recently obtained new work; she then left that job to take another position which did not work out and she is unemployed again.

[7] Ms Te Ahuru's counsel advises that her client has no assets and, as I have already noted, no job and that she is presently reducing her own legal costs incurred in the personal grievance claim at the rate of \$20 per week which money comes from her partner's income. On the basis of that repayment arrangement, it will take Ms Te Ahuru approximately 7½ years to repay her own legal costs.

[8] The Authority is also aware that Ms Te Ahuru has chosen to challenge the Authority's decision in the Employment Court and that raises the question whether costs in the Authority ought to be dealt with at this juncture. In accordance with the usual practice of the Authority where that is the situation, I think it proper that the costs issue for this stage of the matter be dealt with now.

Determination

[9] In the normal course, it would be usual to visit a costs award on the unsuccessful party on the basis that the costs usually follow the event. In this particular case, the respondent was completely successful in the Authority and there are no particular circumstances (save for Ms Te Ahuru's financial plight) which would mitigate against that.

[10] However, it is proper that I take into account Ms Te Ahuru's financial position. It is self-evident that she is impecunious. If I were to make an order in favour of the respondent, such an order might well be no more than pyrrhic because it is plain that Ms Te Ahuru is really in no position to pay.

[11] I think the Authority is entitled to take into account the possible effect of another impost on Ms Te Ahuru; it may be that were the Authority to make an order against Ms Te Ahuru in respect of costs, this would further slow her progress in repaying her own legal costs.

[12] In all the circumstances then, I am not persuaded that an order should be made; I think this is a case where, because of the impecunious nature of the applicant, costs should lie where they fall.

James Crichton
Member of the Employment Relations Authority