

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Lisa Tunnicliffe (Applicant)
AND Le' Kreme Limited (Respondent)
REPRESENTATIVES Rachel Oldham, Counsel for Applicant
Brian Spong, Advocate for Respondent
MEMBER OF AUTHORITY R A Monaghan
MEMORANDUM RECEIVED 28 July 2005
DATE OF DETERMINATION 8 September 2005

DETERMINATION OF THE AUTHORITY ON COSTS

[1] In a determination of the substantive matter between the parties, dated 9 June 2005, I found Ms Tunnicliffe had a personal grievance in that she had been unjustifiably dismissed. Costs were reserved.

[2] Counsel for Ms Tunnicliffe has filed a memorandum seeking an award of costs in Ms Tunnicliffe's favour. Nothing has been filed on behalf of Le'Kreme Limited.

[3] Ms Tunnicliffe was successful in her principal claim, and is entitled to a contribution to the costs she incurred in bringing it.

[4] As for the amount of the contribution counsel pointed out, correctly, that the failure of Le'Kreme to attend mediation or file a statement in reply meant the first time the applicant became aware of Le'Kreme's response to the claims against it was on the date of the first investigation meeting in November 2004. This led to delays during the course of the meeting, and eventually the meeting had to be adjourned so that further information could be obtained. The effect of these delays should be reflected in an award of costs.

[5] Counsel cited actual costs totalling \$6,324.04 in respect of the period leading up to and including the first investigation meeting. Ms Tunnicliffe would not have been forced to incur those costs if Le'Kreme had at the very least participated in mediation and filed a statement in reply, as well as given proper consideration to the implications for it of Ms Hamilton's alleged behaviour. While it was not obliged to seek professional advice, it would have benefited from having done so and I am prepared to recognise the effect of its overall inaction in the context of the costs Ms Tunnicliffe incurred.

[6] The costs were reasonable and the above factors warrant a greater contribution than would otherwise be the case. The only limiting factor is the evidence that Le'Kreme's business was not performing well in 2004 - raising a question of ability to pay - but even then I am unaware of the

current financial position of the business. Accordingly Le'Kreme is to contribute to this portion of the costs incurred in the sum of \$4,000.

[7] Counsel cited further costs of \$4,578 (exclusive of GST), together with office charges and disbursements totalling \$208.26, in respect of the period commencing December 2004. To some extent these costs were incurred because of the flow-on effect of Le'Kreme's earlier inaction, including the need to adjourn the November investigation meeting. There did, however, come a point where the flow-on effects were overtaken by continuing unsuccessful attempts to obtain evidence from Ms Hamilton and Mr Bourduk. I do not believe it is fair for that aspect to sound in costs against Le'Kreme.

[8] I therefore order Le'Kreme to contribute to the costs incurred from December 2004 onwards, in the sum of \$1,000.

[9] In total Le'Kreme is to contribute to Ms Tunncliffe's costs in the sum of \$5,000. I order accordingly.

R A Monaghan
Member, Employment Relations Authority