

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Maree Ann Vaile (Applicant)
AND West Coast District Health Board (Respondent)
REPRESENTATIVES William John Vaile In person
Paul White, Counsel for Respondent
MEMBER OF AUTHORITY Philip Cheyne
DATE OF DETERMINATION 16 August 2006

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 6 June 2006 I dismissed Mrs Vaile's personal grievance and other claims against the West Coast District Health Board and reserved costs.

[2] On 4 July 2006 counsel for the WCDHB wrote to the Authority advising that there had been an unsuccessful attempt to resolve costs and the Board now sought an order against Mrs Vaile that she pay \$1,600.00 towards its costs and reimburse travel costs of \$649.00. That was forwarded to Mrs Vaile with a request for any comment within 14 days. On 18 July 2006 I extended that time after hearing from Mrs Vaile that she had only just received the material. On 24 July 2006, Mrs Vaile sent to the Authority an email from her to counsel for the Board in which she responds to the claim for costs. On 7 August, counsel filed a memorandum on costs more fully setting out the claim. That was forwarded to Mrs Vaile but there has been no response from her. It is not necessary to delay further finalising this matter.

[3] Counsel refers to *PBO Limited v Da Cruz* 9/12/2005, Colgan CJ, Travis, Shaw JJ, AC2A/05 and I accept that the case summarises relevant principles. The claim is based on 6 hours hearing time including mediation pursuant to the Authority's order, an allowance of a day and a half and an hourly rate of \$280 per hour to generate assessed reasonable costs at \$2,520.00. A contribution of 66% of that sum is sought in addition to the travel costs. I take the reference to a day and a half as meaning a factor of 1.5 times hearing time to give total reasonable professional time given the reference to *Okeby v Computer Associates (NZ) Limited* [1994] 1 ERNZ 613.

[4] Several points need to be made about this. The professional time required for the respondent to participate in the investigation process is a different matter from what might be required to properly defend adversarial litigation. Here, the respondent needed to review the statement of problem (a succinct document) and lodge a statement in reply. The Authority support officer attempted to encourage the respondent to agree to mediation but that was declined so a phone conference was arranged. Before then, the respondent lodged an application seeking further particulars. During the phone conference, I ordered the applicant to provide a statement of evidence. There was a subsequent conference during which a direction to mediation was made. There was always going to be a direction to mediation and that would have been the proper forum

to get a fuller understanding of the problem if necessary. The time spent by the respondent engaging the Authority after the statement in reply was not therefore necessary for the investigation. Mediation is not part of the investigation process and professional time at or preparing for mediation is not relevant for present purposes.

[5] There was a further phone conference after mediation did not resolve the problem. I decided to interview Mrs Vaile and arranged for any further information from or statements supporting her to be available beforehand. The respondent was not required to provide any statements or evidence. The interview took approximately 1¼ hours. I then issued a final determination, having satisfied myself that I could fairly decide the issues being raised by Mrs Vaile without further information. Counsel was present and needed to review the statements from and supporting Mrs Vaile beforehand. I estimate about 5 hours professional time was required to take instructions, draft and lodge the reply, review the statements, attend the interview and participate in phone conferences. On that basis, costs necessarily incurred to participate in the investigation process are about \$1,400.00.

[6] Mrs Vaile apparently has not worked since returning from the UK and has been living on savings. However, she has said nothing about her asset position so I cannot say that she is not in a position to meet a modest award of costs. I therefore do not accept that all costs should be waived. The proper course is to make a modest award lower than usual as a contribution to costs. I order Mrs Vaile to pay \$600.00 to the respondent as costs. She must also meet counsel's travel costs of \$649.00.

Philip Cheyne
Member of Employment Relations Authority