

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 385
5365888

BETWEEN HELEN WATSON
Applicant
AND AIR NEW ZEALAND
LIMITED
Respondent

Member of Authority: R A Monaghan
Representatives: H White, counsel for applicant
D France, counsel for respondent
Memoranda received: 11 October 2012 from applicant
10 October 2012 from respondent
Determination: 26 October 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 12 September 2012 I found that Ms Watson was dismissed justifiably. Costs were reserved and the parties have filed memoranda on the matter.

[2] Mr France cited the principles in *PBO Limited v da Cruz*¹ and submitted that an order for costs in the form of a contribution of \$9,000 was appropriate. He referred to a notional daily rate of \$3,500 and said additional relevant factors were: an earlier unsuccessful application for removal of the matter to the Employment Court;² and that provision should be made for the reduction in hearing time occasioned by the provision of written submissions after the investigation meeting had concluded.

[3] Ms White noted that the determination of 12 September has been challenged, and indicated a preference that costs be left for determination after the challenge has

¹ [2005] ERNZ 808.

² *Watson v Air New Zealand Limited* [2012] NZERA Auckland 11

been decided. However in such circumstances it is usual for the Authority to determine costs if it is asked to do so. I proceed accordingly.

[4] Ms White submitted in the alternative that costs should lie where they fall. In support she referred to the nature of the case, and invoked equity and good conscience. Regarding the nature of the case she submitted that the application for reinstatement was a genuine application, made by a longstanding employee who was subjected to a disciplinary process which was not best practice and which caused distress to Ms Watson. Aspects of the process which were lacking were pointed out.

Determination

[5] Air New Zealand was the successful party in the Authority and is entitled to a contribution to its costs.

[6] The investigation meeting took one and a half days, so that on a notional daily rate of \$3,500 in respect of hearing time the contribution is \$5,250. It is appropriate to adjust the rate upwards in respect of the unsuccessful application for removal to the Employment Court (and in which costs were reserved), and to reflect the hearing time saved by the provision of written submissions after the end of the investigation meeting.

[7] I would adjust the contribution upwards by the sum of \$1,000 to cover both of those points.

[8] Regarding reasons for an adjustment downwards, and with reference to the submissions on why costs should lie where they fall, the employment relationship problem was presented efficiently and nothing in the way Air New Zealand conducted its case added unnecessarily to preparation or hearing time. The case was not a test case, and in the context of the personal grievance claims with which the Authority deals it had no unusual features. I consider the submissions regarding the nature of the case concerned the merits of Ms Watson's grievance in a way that may be relevant in the challenge, but are not relevant in costs.

[9] The submission in respect of equity and good conscience relied on the same points concerning the merits of the grievance. My conclusion is also the same.

[10] As a result there will be no adjustment downwards, rather an adjustment upwards in the sum and for the reasons indicated.

Order for costs

[11] Ms Watson is ordered to contribute to Air New Zealand's costs in the sum of \$6,250.

R A Monaghan

Member of the Employment Relations Authority