

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2012] NZERA Auckland 463  
5361322

BETWEEN                      ROSS WILLIAM WATSON  
   Applicant  
  
AND                                UGL (NZ) LIMITED  
   Respondent

Member of Authority:        K J Anderson  
  
Representatives:              Ross Watson, (Applicant) in person  
   Charlotte Parkhill, Counsel for Respondent  
  
Submissions received:        25 October 2012 from Applicant  
   8 November 2012 from Respondent  
  
Determination:                18 December 2012

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     In a determination dated 1<sup>st</sup> October 2012<sup>1</sup> the Authority found that the (constructive) dismissal of Mr Watson was unjustified. The parties were invited to resolve the issue of costs but have not been able to do so. Submissions have now been received from both parties.

[2]     The applicant submits that he has incurred costs of \$4,473.50 (including GST) and a costs summary from the law firm that advised Mr Watson has been provided, confirming this. Mr Watson asks that the Authority apply the usual daily tariff approach allowing for hearing time of one and a half days. The daily tariff that Mr Watson has applied (\$3,000) is now \$3,500 and on that basis, if Mr Watson had been represented at the investigation meeting, and given that he was largely successful with his claims, he would be entitled to a costs award of \$5,250, or in this case, the lesser sum claimed of \$4,473.50.

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<sup>1</sup> [2012] NZERA Auckland 341

[3] The respondent, UGL (NZ) Limited (UGL) submits that because Mr Watson was not represented at the investigation meeting, he is not entitled to a costs award at all. In support of this contention, the submissions for UGL allude to the (established) fact that the summary of costs from the law firm that advised Mr Watson, show that all of the legal advice provided, occurred prior to Mr Watson filing his claims with the Authority. Indeed, the evidence shows that Mr Watson resigned from his employment on 15<sup>th</sup> March 2011 and the last entry on his summary of costs is recorded as being 7<sup>th</sup> April 2011. Mr Watson did not file a statement of problem with the Authority until 26<sup>th</sup> October 2011. Therefore, without further persuasive evidence or authority, Mr Watson is not entitled to recover any costs associated with the investigation of the Authority.

### **Determination**

[4] When an investigation of the Authority involves an unrepresented party, one has to be particularly cognisant of the discretion of the Authority to award costs to a successful party pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000:

The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.

And then there is the relevant principal stated again (more recently) by the Employment Court (Judge Couch) in *Gates v Air New Zealand Ltd* [2010] NZEmpC 26 at para [5]:

The fundamental purpose of an award of costs is to recompense a party who has been successful in litigation for the cost of **being represented in that litigation by counsel or an advocate**. [Emphasis added.]

Mr Watson was not represented at any stage of the litigation (investigation) with the Authority and while he makes the point that if he had been represented, then UGL would have been liable to make a contribution to his costs. But of course, Mr Watson would have incurred substantial further legal costs that would have consumed a significant portion of the remedies that he was awarded, a factor that he probably considered when he made the decision to represent himself.

[5] Having closely perused the summary of costs that Mr Watson incurred, I can find nothing that suggests that any of those costs are associated with the proceedings involving the investigation of the Authority, let alone preparation for the investigation meeting. And while I have some empathy for the overall position of Mr Watson, regrettably, I am bound to conclude that his circumstances are such that it is not appropriate to make any award of costs; apart from the recovery of the filing fee associated with his application to the Authority.

[6] UGL (NZ) Limited is ordered to pay to Mr Watson the sum of \$71.56 being the application fee paid to the Authority.

**K J Anderson**  
**Member of the Employment Relations Authority**