

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Jeanette Wenborn (Applicant)
AND Modus Group Limited (Respondent)
REPRESENTATIVES Graham Rossiter for Applicant
Andrew Blair for Respondent
MEMBER OF AUTHORITY P R Stapp
SUBMISSIONS RECEIVED 2, 7, 23 & 31 March and 3 April 2006
DATE OF DETERMINATION 10 May 2006

COSTS DETERMINATION OF THE AUTHORITY

1. The parties are pursuing an outstanding matter on costs. The respondent is seeking a contribution of \$3,935.81 costs (being 66% contribution of the respondent's costs of \$5,963.34: details provided). The applicant opposed the claim and has submitted that the delay should weigh against any award and that it would be appropriate for them to lie where they fall.
2. The respondent has left its claim for costs about four months after the Authority's substantive determination that was issued on 10 October 2005. Costs were reserved by the Authority. I am now required to determine the matter because it was left open to do so. There was no time limit placed on the reserved costs by the Authority on 10 October 2005. It is not unreasonable for costs to be pursued and I am satisfied that the applicant has not been prejudiced. I do not accept the delay since the determination and the application being made should be a significant factor weighing against an award being made. The applicant should not be surprised by the application for costs by the respondent. Nothing was done by the applicant to close the matter or to permit her to believe that it had gone away.
3. The respondent was successful and costs are to recompense a party who has been successful.
4. There were arguable issues to be investigated in the matter and the conduct of the parties was not dissimilar to any other proceedings, involving preparation and attendance for an

investigation meeting set down for a full day. Both parties were represented. The successful Respondent has incurred costs.

5. The preparation involved gathering documents. The investigation was efficient using as it did the detailed and issue specific SOP and SIR. Any issue on costs for Clare Howard and the involvement of Sterling Human Resources Limited is an entirely separate matter.
6. I have not used the detailed information from the respondent for its assessment because it included GST and the time incurred exceeds the fair proportion used in these types of employment relationship problems. A fair sum of reasonable costs for 6.5 hours of investigation meeting time and preparation I have calculated at 2 times the investigation meeting time using \$200 per hour. The respondent has incurred costs not unreasonably to defend the matter and should be paid a contribution by the applicant. I assess reasonable costs at \$2,600 including preparation and that Jeanette Wenborn should contribute \$2,000 towards the reasonable costs. This is because the respondent has incurred costs in a matter the applicant was entirely unsuccessful on. I order Jeanette Wenborn to pay Modus Group Limited a contribution of \$2,000 towards costs.

P R Stapp
Member of Employment Relations Authority