

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Craig Whitford (Applicant)
AND South Auckland Motors Limited (Respondent)
REPRESENTATIVES Tracey Wotherspoon for applicant
Margaret Matthew for respondent
MEMBER OF AUTHORITY Alastair Dumbleton
CONSIDERATION OF PAPERS 30 November 2005
DATE OF DETERMINATION 30 November 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

- [1] The respondent South Auckland Motors Limited (SAM) seeks an order requiring the applicant Mr Craig Whitford to pay a reasonable contribution towards costs incurred by SAM through its participation in an Authority investigation.
- [2] That investigation commenced on 5 September 2005, when Mr Whitford lodged an application with the Authority. In it he asked the Authority to resolve his claim that SAM had unjustifiably dismissed him from employment with the company in March 2004.
- [3] SAM lodged a statement in reply to the application on 15 September 2005, maintaining that the dismissal was justified.
- [4] On 28 September, after consulting the parties' legal representatives Ms Wotherspoon and Ms Matthew, directions were given by the Authority for an investigation meeting to take place on 2 November 2005. In preparation the parties' witnesses were required to exchange and lodge written statements of evidence by 26 October 2005, a date chosen by the Authority to allow at least seven days for the statements to be read and considered prior to the investigation meeting.
- [5] Statements by three SAM witnesses and a bound bundle of relevant documents were received on 18 October. This was ahead of time but earlier attention to completing this step is always appreciated by the Authority.
- [6] At some point Mr Whitford decided not to proceed with his claim, but notification of his decision was not given to SAM and the Authority until 26 October, by which time the company's witnesses had been briefed and their statements provided as earlier directed.

[7] In those circumstances surrounding the ending of the investigation, SAM seeks a reasonable contribution to actual costs incurred of \$2,250. Ms Matthew asks the Authority to have particular regard to the lateness of discontinuance of the claim as well as to the lack of its merit.

[8] In opposing the application for costs Mr Whitford has given the Authority written statements made by himself and his mother, father and wife about his personal circumstances. These are matters for which he and his family deserve sympathy. While the statements explain why he decided not to proceed with the claim their contents do not provide any reasonable basis for a finding that SAM should have to bear the cost of Mr Whitford's decision, especially when made at the last minute. If on their face the statements had provided a basis for such a finding, an investigation meeting would still have been required for matters to be properly put in evidence and examined.

[9] I am satisfied that the matters put forward in unsworn form are not potentially matters that should carry weight in determining the costs application. One of those matters is the merits of the grievance claim itself. It may well be that the claims were compelling and highly likely to succeed, in which case the path had been laid for the case to proceed to that result. It could have been obtained if Mr Whitford had wished, but he did not. The second matter was the trauma Mr Whitford and his family have undoubtedly suffered from the criminal behaviour of a dangerous convicted criminal and prison escapee, and his associates. This however is not a matter that SAM can possibly bear any responsibility for in relation to the investigation and resolution of the personal grievance claim which, as I have said, could have taken place at the option of Mr Whitford if he had wished.

[10] I therefore consider that the Authority should exercise its discretion in favour of SAM with an award of costs. Its actual costs have been very well contained by Ms Matthew. The assault committed on Mr Whitford in presumed retaliation for his giving evidence at the trial of an accused criminal, happened on about 5 August 2005. This was over a month before he lodged his claim in the Authority. If the assault had occurred close to the date of the investigation meeting it might have been given more weight, but as things were there was time for Mr Whitford to make his difficult decision and save SAM from the cost of preparation for the meeting.

[11] I consider that a contribution of \$900 is appropriate in the circumstances which include the likely limitations on Mr Whitford's ability to pay.

[12] The Authority therefore orders Mr Whitford to pay \$900 to SAM as a contribution to costs. The order is made under clause 15 of Schedule 2 of the Employment Relations Act 2000.

A Dumbleton
Member of Employment Relations Authority