

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 23A/10
5156902

BETWEEN GEMMA WHYTE
 Applicant

AND CREATIVE FORCE MEDIA
 LIMITED
 Respondent

Member of Authority: R A Monaghan

Memoranda received: 16 February 2010 from applicant
 24 February 2010 from respondent

Determination: 01 March 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 19 January 2010 I found Ms Whyte's dismissal on the grounds of redundancy was genuine, but was unjustified because of the way in which it was implemented. No remedy was awarded. I also made various orders for payments of wages, holiday pay and redundancy compensation owed by Creative Force, but did not accept that Creative Force was liable for entitlements accrued in respect of Ms Whyte's previous employment relationship.

[2] Costs were reserved.

[3] Ms Whyte seeks a contribution to her costs. She incurred costs of professional representation. Although Ms Whyte's advocate withdrew before the investigation meeting and attended the meeting as a witness only, the file shows he carried out significant amounts of preparatory work on her behalf. This matter can be raised as a cost of professional representation in a claim for costs. I take it from Ms Whyte's submission that she is asking the Authority to apply a notional daily rate for a one-day meeting, and seeks a contribution to her costs of \$2 – 3,000.

[4] Mr Morris pointed out, correctly, that Ms Whyte was not successful in all of her claims. He said in addition that he has spent considerable time on the matter, and has sought advice from his accountant. However I could not identify the areas in which advice was sought, or its relevance to the proceedings in the Authority, from the way in which the matter was presented to the Authority. Accordingly it was not possible to identify whether Creative Force had a valid claim for a contribution to its costs of professional representation, and if so in what amount. Mr Morris' expenditure of his own time is not able to be compensated for in costs.

[5] In determining costs it is relevant to consider the extent to which each party was successful.

[6] The most significant of the claims concerned the redundancy. Ms Whyte was unsuccessful in her challenge to its genuineness, but successful in her challenge to its implementation and in her entitlement to redundancy compensation. On balance I consider her the successful party in that matter.

[7] The next most significant claim concerned the entitlement carried over from Ms Whyte's previous employer. That claim was weak and Creative Force was the successful party.

[8] The remaining matters flowed from Ms Whyte's entitlement to holiday pay. On balance I consider the parties had similar degrees of success.

[9] An overall weighing of the areas and degrees of success leads me to conclude it is appropriate that costs lie where they fall. Accordingly there will be no order for costs.

R A Monaghan

Member of the Employment Relations Authority