

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 269A/07
5069834

BETWEEN MARTYN WILLIAMS
 Applicant

AND CAMIRA FURNITURE LTD
 Respondent

Member of Authority: Yvonne Oldfield

Representatives: Clive Bennett for Applicant
 Jennifer Wickes for Respondent

Submissions received: 26 September 2007 from Applicant
 13 September 2007 from Respondent

Determination: 13 December 2007

DETERMINATION OF THE AUTHORITY AS TO COSTS

Employment Relationship Problem

[1] In a determination dated 30 August I found that Mr Williams had been unjustifiably dismissed but also found that remedies should be reduced for contributory conduct. Camira Furniture limited was ordered to pay the sum of \$3,500.00 to Mr Williams pursuant to s.123 of the Employment Relations Act. Camira Furniture Ltd was in turn successful in relation to a counterclaim against Mr Williams for personal expenditure that he had not repaid before his employment ended. I ordered Mr Williams to pay \$4,635.00 in relation to that counter claim.

[2] I concluded my determination with this instruction in relation to the issue of costs:

“This issue is reserved. Given the nature of the determination, this appears to be a case where it might be appropriate for costs to lie where they fall. However, I have not heard the parties on the issue of costs. Should either party wish to pursue a claim for costs they should do so within 28 days of the date of this determination.”

[3] The respondent opted to pursue a claim for costs and the parties have now made submissions on the issue.

Submissions

[4] The respondent seeks costs. Ms Wickes has argued in submissions that the respondent effectively “won” because Mr Williams recovered only \$3,500.00 of claims totalling \$27,000.00 while the respondent recovered its counter claim (\$4,635.00) in its entirety. She advised that the respondent had incurred costs totalling \$5,761.00 in defending the claim and submitted that the following circumstances justify costs following the event:

- a. *“The respondent, its representative and the Applicant’s representative all attended at the mediation arranged in this matter on 19 March 2007. The Applicant never appeared and the mediation had to be aborted. No reason was ever given for the Applicant’s non-attendance.*
- b. *The Applicant’s evidence to the Authority was misleading. It transpired he had found new employment prior to being dismissed by the Respondent and he had misstated the amount being earned by him following his dismissal. These two facts are quite contrary to the impression given by him in his...brief.”*

[5] For the applicant, Mr Bennett began by explaining Mr Williams’ failure to attend mediation. He said his client had inadvertently overlooked to tell him of a change of address and had thus failed to receive notification of the mediation. Mr Bennett said however that discussions were held between the representatives and the mediator and it appeared that the matter was unlikely to be resolved in any event. He advised that the applicant’s own costs were \$4,412.00 which has put “*severe financial pressure on the applicant.*”

[6] In conclusion Mr Bennett argued that there were no “winners” and that costs should indeed lie where they fall.

Determination

[7] I note that the respondent has not suggested that there was in this case a Calderbank offer or anything of that sort to indicate that the matter should not have proceeded to be investigated. There were disputed issues here, and the parties were entitled to have them heard. It was also open to either of them to take the initiative to try and resolve them at any time. The applicant's failure to attend the scheduled mediation need not have been fatal to that process and I conclude that it is not relevant to the determination of costs in this case.

[8] Both parties in this case have been successful in recovering modest sums, and both have incurred moderate costs. I do not consider it correct to say that the respondent has "won." The outcome was more in the nature of a draw. Nothing in submissions from the parties has changed my preliminary view that costs should lie where they fall.

[9] I make no order for costs.

Yvonne Oldfield

Member of the Employment Relations Authority