

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Melissa Jane Williams (Applicant)
AND Kimberley Fashions Limited (Respondent)
REPRESENTATIVES Edwin Telle, Counsel for Applicant
Penny Shaw, Counsel for Respondent
MEMBER OF AUTHORITY Dzintra King
SUBMISSIONS RECEIVED 21 September from Respondent
7 October from Applicant
7 November 2005
DATE OF DETERMINATION

DETERMINATION OF THE AUTHORITY

The respondent successfully defended the applicant's personal grievance claim and now seeks costs. The applicant also sought a stay of the proceedings in relation to costs, which matter was subsequently withdrawn.

The respondent's costs total \$6,500 and it seeks the full award of this amount. The respondent made a Calderbank offer on 1 March 2005 of \$3000, which was not accepted.

The applicant, while accepting that the principles set out in Reid v NZ Fire Service Commission [1995] 2 ERNZ 38 and Okeby v Computer Associates (NZ) Ltd [1994] 1 ERNZ 613 apply, submitted that this was a case where it was proper to depart from the position that costs should be awarded to the respondent. This was on the basis that this was a test case and a case of public importance and that there were special circumstances.

Mr. Telle maintained it was a test case because the issue was whether an employer could force an employee to wear makeup and that the outcome of this case would affect people in similar circumstances. The claim that it is a case of public importance is related to the issue of the wearing of makeup.

Mr. Telle submitted that should costs be awarded they should be kept to a low level. He submitted that the amount claimed was excessive and that the applicant's ability to pay was limited as she has been unemployed since July 2004, has given birth to a child on September 11 2005 and struggled to make ends meet

While I understand that Mr. Telle sincerely regards this case as a test case and one of public importance, I do not accept that submission. The makeup issue involved in this case was limited to

the circumstances of the applicant's employment. Neither do I accept that a full award of costs should be made. There are no circumstances that would indicate this in this case.

I do take into account the Calderbank offer that was made and also, given that the applicant has recently given birth, that she will have limited income. However, no financial statement was produced to me and I have no idea what assets the applicant may have. The applicant is to pay the respondent the sum of \$2,000.

Dzintra King
Member of Employment Relations Authority