

**IN THE EMPLOYMENT COURT
AUCKLAND**

**AC 37A/09
ARC 58/08**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER OF an application for costs

BETWEEN REAL COOL LTD
Plaintiff

AND CHRISTINE GUNFIELD
Defendant

Hearing: by memoranda of submissions filed on 25 November and 7 December
2009

Judgment: 10 December 2009

COSTS JUDGMENT OF CHIEF JUDGE GL COLGAN

[1] The defendant seeks an order fixing the actual and reasonable costs of her proceedings incurred both in the Employment Relations Authority and the Employment Court. This is for the sum of \$8,602.35.

[2] Although the plaintiff was partially successful on the challenge in that the remedies awarded by the Authority were reduced, I nevertheless found at paragraph [25] of the oral judgment delivered on 21 October 2009 (AC 37/09):

I conclude that the fairest outcome is to require the plaintiff to meet the actual and reasonable costs of these proceedings incurred by Ms Gunfield in both the Employment Relations Authority and in the Employment Court. Real Cool has not emerged well from this case in terms of its handling of sensitive employment issues. Its confused and ham fisted dealings with a vulnerable employee have meant that Ms Gunfield has been put to significant unnecessary cost and delay for which she should not lose further.

[3] One contentious issue was originally whether Ms Gunfield's mediation costs are to be included. Her advocate submitted that these were a part of the proceedings in the Authority because, after the company had failed to agree to attend mediation, this was directed by the Authority. Ms Gunfield says that situation was aggravated by the company's failure to respond to a request to reconvene the Authority-directed mediation that was adjourned and the matter then went back to the Authority where, again, the plaintiff failed to put in an appearance. I agree it is appropriate to include mediation costs in these circumstances and I understand the company now accepts that.

[4] Mr Single notes that Ms Gunfield does not seek to recover her personal travel expenses to the Employment Court hearing and does not ask for witness expenses. The defendant does seek an award of \$155 for the cost of preparing costs submissions.

[5] Mr Single has helpfully provided copies of the invoices supporting the claim for costs and I accept from these that Ms Gunfield's actual costs of representation were reasonable in all the circumstances.

[6] Mr Hopkinson, representing the plaintiff, accepts responsibly, and consents to, an order for costs of \$8,602.35 but conveys his client's resistance to paying a further \$155 for the costs of bringing the costs application.

[7] The evidence discloses a degree of (proper) negotiation between the parties' representatives over the question of costs with the plaintiff's concessions falling short progressively of what it has conceded eventually is properly payable. In these circumstances I consider that the defendant was justified in seeking the modest sum of \$155 for additional costs and, in these circumstances, I direct the plaintiff to pay to the defendant the total sum of \$8,757.35 for costs and disbursements.

GL Colgan
Chief Judge

Judgment signed at 4.15 pm on Thursday 10 December 2009