

**IN THE EMPLOYMENT COURT  
WELLINGTON**

**WC 21/06  
WRC 17/06**

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

BETWEEN RIA GREENING  
Plaintiff

AND ABOUT DEMOLITION &  
CONTRACTING (2003) LIMITED  
Defendant

Appearances: Written submissions received 28 July 2006

Judgment: 6 November 2006

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**JUDGMENT OF JUDGE C M SHAW**

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[1] This is a challenge to an award of costs against Ms Greening made by the Employment Relations Authority following the dismissal of her personal grievance. The challenge has been dealt with on the papers. The parties' representatives filed written submissions.

[2] Both parties were unsuccessful in their claims to the Authority. The company had initiated the proceedings, claiming that Ms Greening was in breach of her employment contract by acting in breach of her obligations of trust and honesty. It alleged that she had made a double payment of her own salary and made unauthorised transfers of company funds via the internet. It also alleged that the stress which the plaintiff subsequently suffered was caused by her own dishonesty. The company claimed for repayment of sick leave because she had caused the stress herself and for other specified costs. It sought unspecified special damages and \$5,000 general damages against her.

[3] The Authority dismissed the employer's claims. It held that Ms Greening was entitled to her stress leave and that any other expenses incurred by the company were normal costs of doing business.

[4] Ms Greening also lodged a statement of problem alleging that she had been unjustifiably dismissed. The Authority found that having properly investigated its allegations against Ms Greening the company was justified in dismissing her because what she had done had impaired or destroyed the trust and confidence of the employer.

[5] While the Authority had some doubts about whether one allegation against Ms Greening could have been sustained, it found that the strength of evidence gathered by the employer about Ms Greening's use of her personal home computer to make unauthorised payments was strong evidence and that the company had properly concluded that she had made the transfers deliberately.

### **The Employment Relations Authority costs determination**

[6] In a separate determination the Employment Relations Authority rejected the plaintiff's submission that costs should lie where they fall. It noted that the key focus of the investigation had been on the personal grievance and accepted that the company had to do additional work to strengthen its evidence backing its claims in the face of Ms Greening's personal grievance. This was a factor for increased costs in the company's favour. In contrast, the Authority said that only a few minutes was spent on the damages claim. Because the investigation had taken a full day, the extra preparation which the company had to do to rebut Ms Greening's claims meant that an award of costs in its favour was justified. The Authority ordered that she pay \$2,500 as a contribution to the company's costs of \$5,805.

### **Costs challenge**

[7] On Ms Greening's behalf it was submitted that the Authority had made no distinction between the two claims and had focussed on the personal grievance. If it had properly focussed on both claims costs would not have been awarded to either

party. Because both parties had failed on their claims, costs should lie where they fell.

[8] There was strong reliance on Ms Greening's financial position. Her representative submitted documents to support her case that the combined family weekly income (she was on parental leave) is as high as their weekly expenses. In addition she has debts totalling close to \$10,000. Her husband is facing criminal charges and needs to find \$1,000 for legal costs.

[9] For the employer, Mr Olgivie submitted that it is plain from the substantive determination of the Authority that it had to focus almost entirely on the personal grievance claim for unjustified dismissal. He also referred to the employer's need to call witnesses to refute statements made by Ms Greening. He submitted that the defendant is a struggling company with substantial debts and was put to considerable expense for a personal grievance claim that was unsuccessful. He noted that there were no submissions made to the Authority about Ms Greening's financial circumstances.

[10] Finally, it appears from the papers that Ms Greening is applying to the Employment Relations Authority to have the investigation reopened alleging that the first investigation was conducted unfairly. The Court has no information about the progress of that matter.

## **Decision**

[11] The question of costs in the Authority was traversed by the full Court in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*<sup>1</sup>. In assessing these costs, the Court applies the principles which guide the Authority. The full Court stressed that the Authority has discretion to award costs as it thinks just.

[12] In the present case the Authority's costs decision is reasoned and covers all matters which were put to it in the written submissions. Although normally I would not be prepared to interfere with such an appropriate exercise of the Authority's discretion, on this de novo challenge further evidence has been put before the Court

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<sup>1</sup> [2005] 1 ERNZ 808

about the means of the parties. This requires consideration. Both parties have alleged financial hardship. Ms Greening in particular has supplied full documentary evidence of her difficult financial situation.

[13] The means of the parties is an important consideration to take into account when exercising the discretion to award costs, and, although it has been raised belatedly, Ms Greening's situation cannot be overlooked. On the other hand, the company was put to expense brought about by her unsuccessful claim. It too is in a difficult financial situation and is entitled to some contribution towards its costs.

[14] In the light of the additional evidence about Ms Greening's financial situation which was not available to the Authority, I reduce the award of costs to \$1,000. I recognise that even this amount will be difficult for her to pay. I note Mr Ogilvie's sensible submission that arrangements could be made for her to pay by instalments.

### **Conclusion**

[15] The challenge to the award of costs is allowed. The plaintiff will pay \$1,000 to the defendant. There will be no award of costs to either party on this challenge.

**C M Shaw  
JUDGE**

Judgment signed at 3.30pm on 6 November 2006

Solicitors: Whitireia Community Law Centre Inc, Porirua, for Plaintiff  
Employment Contract Services Ltd, Wellington, for Defendant