



cullings is the newsletter of
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Employee ordered to pay \$65,000

Usually the media reports on employment cases which have interesting facts or which involve large sums of money that employers are ordered to pay to employees. A recent decision of the Employment Court highlights that it is not a one way street. In the Gates decision the Employment Court ordered that the ex-employee pay her ex-employer \$65,000 in costs.

The Facts

Mrs Gates was employed in the Accounts Payable department at Air New Zealand from December 1977 until April 2002.

In March 2002, Air New Zealand decided to disestablish Ms Gates' position due to a review of her teams operations and systems. Despite attempts to relocate Mrs Gates to another position, Air New Zealand eventually terminated her employment on grounds of redundancy.

Ms Gates raised three personal grievance claims in relation to her dismissal. The first alleged that her redundancy was not genuine and that her dismissal was therefore unjustifiable. The second was that she had been treated unfairly in the process leading to the decision to terminate her employment, and that this constituted unjustified disadvantage. The third was that she had been discriminated against on grounds of employment status. The second and third grievances were largely concerned with an alleged failure by Air New Zealand to offer Mrs Gates certain alternative positions.

The Process

The Employment Relations Authority investigated Mrs Gates' claims and dismissed all three. Following that decision, Mrs Gates

undertook a process of appeal. The process spanned over 5 years.

During that time further issues and questions were raised by the parties. Mrs Gates added bullying and harassment allegations to her list of claims. Air New Zealand challenged this on grounds no grievance was lodged within 90 days and no action was brought within 3 years. It also submitted that the Court could not hear matters which were not originally considered by the Authority. Long series' of interlocutory proceedings took place over several years and significant costs were incurred by both parties.

The Decision

The Employment Court eventually, having considered all the evidence, determined that Mrs Gates' claims of bullying and harassment were not within its jurisdiction to consider as they had not been brought in the first instance before the Authority. It found that in dismissing Mrs Gates Air New Zealand had saved money and there could be no doubt that the company had good reason to reduce its costs at that time. The redundancy was genuine. With regard to the process of termination, the Court found that Mrs Gates' allegations of unfairness were not sustained on the evidence.

In its substantive decision the Court noted that Mrs Gates had raised many issues which were not the subject of her original claim. It pointed out that in reaching its decision it had had to resolve conflicts of evidence about important issues. This was because Mrs Gates' evidence was most often contradicted, not only by Air New Zealand but by witnesses Mrs Gates herself had called. Mrs Gates had little recollection of many events in question. She frequently gave answers that were inconsistent with contemporary documents. The Court

concluded that her evidence was the result of reconstruction rather than recollection. The amount of evidence the Court had to consider contributed substantially to the time it took to determine the case.

The Court said that defending the matter had put Air New Zealand to considerable cost. It invited the parties to discuss the issue of costs or file memoranda if they could not agree.

Costs

Air New Zealand filed a detailed memorandum seeking an award of costs. Mrs Gates did not respond to it in the required time. In fact, after the time had expired she sought to have it extended. She gave no explanation of the failure to comply in time. Extension of time was refused. Eventually Mrs Gates filed a memorandum which in relation to costs stated only that "the Plaintiff is not responsible for the defendants costs".

By taking the attitude of denial Mrs Gates placed herself at risk of a very substantial award of costs being made against her. Air New Zealand had clearly outlined its costs and explained the basis on which they were sought. It had also outlined the basic principles governing the courts discretion to award costs.

For over five years Mrs Gates had represented herself in the litigation. She was granted numerous indulgences by the Court. Legal principles were explained to her and time extensions were allowed in many instances. In its costs decision, the Court stated "the time has come, however, when this matter must be brought to an end".

The Court found that Air New Zealand's outline of costs was reasonable. It deducted only \$1000. It then had to determine how much Mrs Gates should contribute. It placed the figure at close to \$58,500 and moved on to determine whether the sum should be adjusted up or down in all the circumstances.

Mrs Gates' case was presented in a way that was inefficient and added significantly to Air New Zealand's costs. Not only was she unfamiliar with legal concepts, she was unwilling to accept things told to her by the court or things that were obvious. Air New Zealand had made an offer in March 2008 of \$30,000 to settle the matter. Mrs Gates rejected that offer. The Court taking all these matters into account increased the costs payable by Mrs Gates from two thirds to three quarters. She was ordered to pay a sum of \$65,000 plus disbursements to Air New Zealand.

Conclusion

The Court has a broad discretion under the Employment Relations Act 2000 (the Act) to order costs. One of the principles to be considered in exercising that discretion is recompense to a party who has been successful in litigation. It is clear in this case that were it not for the way in which Mrs Gates' case was presented, Air New Zealand would not have expended so much in defending itself.

This case is a lesson both to employers and employees. Parties in such cases should consider all relevant principles relating to the Courts discretion to award costs, and should take care to conduct proceedings in a way that is efficient and effective.