

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Marcel Aarts (Applicant)  
**AND** Red Bus Limited (Respondent)  
**REPRESENTATIVES** Marcel Aarts  
Richard Cunliffe for Respondent  
**MEMBER OF AUTHORITY** Philip Cheyne  
**SUBMISSIONS RECEIVED** 22 December 2005 from the Respondent  
26 January 2006 from the Applicant  
**DATE OF DETERMINATION** 30 January 2006

**COSTS DETERMINATION OF THE AUTHORITY**

[1] In a determination dated 23 September 2005 I found against Mr Marcel Aarts who claimed that Red Bus Limited had breached their employment agreement and had not complied with the Holidays Act 2003, and I reserved costs. Red Bus Limited lodged a memorandum on 22 December 2005 and Mr Aarts was requested to provide any response by 30 January 2006. I have now received Mr Aarts' response. This determination resolves the disputed question of costs.

[2] Red Bus Limited has helpfully provided copies of its client invoices which set out in detail the work done by counsel and the fee charged for that work. One invoice is for work related to mediation which the parties participated in after the proceedings were commenced but before the investigation meeting. The file indicates that Mr Aarts agreed to participate in mediation after some discussion with an Authority Support Officer who pointed out the requirements on the Authority of directing parties to mediation unless one of a limited number of exceptions applies. Accordingly, the Authority did not need to make a direction to mediation. The general approach taken by the Authority to costs incurred by a party in participating in mediation is that no award of costs will be made even if the party is completely successful in defending itself against claims, as here. If I disregard the mediation costs, Red Bus Limited has incurred costs of \$17,800 (excluding GST) and disbursements of about \$500 in responding to the statement of problem and preparing for, and participating in, the investigation meeting which lasted about 2½ hours. The problem itself could fairly be described as a dispute but it was necessary to canvass events that occurred over some period of time and to consider the operational environment in which the work took place.

[3] In its submissions, Red Bus Limited refers to the well known case of *Okeby v. Computer Associates (NZ) Ltd* [1994] 1 ERNZ 613, and the principles set out in that case. Based on that, the respondent says that an award of costs of \$4,000 plus reasonable disbursements is appropriate and would be a fair contribution to its actual costs.

[4] In his submission, Mr Aarts says that the case arose as a result of a dispute and makes some points about his perception of that dispute. He ends by submitting that costs should lie where they fall.

[5] The principles applicable to the Authority when considering costs have recently been discussed in *PBO Ltd v. Eneida Lenor Christo da Cruz* 9/12/05, Colgan CJ, Travers and Shaw JJ, AC2A/05. There, the Full Court makes the point that *Okeby* was applicable to the Employment Tribunal and that the Authority has rightly developed its own approach to costs. The Full Court referred to three principles which should be considered in the present circumstances. First, that awards will be modest; second, that frequently costs are judged against a notional daily rate; and third, that the nature of the case can influence costs which might result in ordering that costs lie where they fall in certain circumstances. The Full Court also referred to the survey figures to 30 June 2005 which show that the majority of costs awards for one day investigation meetings are in the range of \$2,000 to \$2,499.

[6] I agree with Mr Aarts that this matter could be seen as a dispute but it also was a claim by him for arrears following on from his view of the contractual requirements. I do not accept that it could properly be seen as a test case. Mr Aarts was not making an application for a group of people, although, if he had been successful, the consequences would have applied to others. Because it is not just a dispute and is not a test case, I do not consider it appropriate to order costs to lie where they fall.

[7] It is a case for a modest award, bearing in mind that Mr Aarts is a part-time employee. In the circumstances, I order Mr Aarts to pay to Red Bus Limited \$700 as a contribution towards the respondent's legal costs and disbursements.

Philip Cheyne  
Member of Employment Relations Authority