

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Robert Martin Antram (Applicant)
AND AFFCO New Zealand Limited (Respondent)
REPRESENTATIVES Alex Hope, Counsel for Applicant
Gillian Spry, Counsel for Respondent
MEMBER OF AUTHORITY Ken Anderson
SUBMISSIONS RECEIVED 18 January 2006 and 7 February 2006
DATE OF DETERMINATION 5 April 2006

DETERMINATION OF THE AUTHORITY AS TO COSTS

- [1] In a determination issued 22 December 2005, Mr Antram was unsuccessful in his claim to be paid additional redundancy compensation. The parties have not been able to resolve the matter of costs.
- [2] The Respondent submits that it incurred costs of approximately \$26,500.00 and seeks a contribution to those costs of “at least” \$12,000. In support of such an award, Counsel for the Respondent cites various criteria as set down by the Court of Appeal in *Binnie v Pacific Health Limited* [2002] 1 ERNZ 438 (CA), as authority to be followed by the Employment Relations Authority.
- [3] However, in *Harwood v Next Homes Limited* [2003] 2 ERNZ 433, the Employment Court examined the statutory role of the Authority, as an investigative body, that has the role of resolving employment relationship problems, by establishing the facts and making a determination according to the substantial merits of the case, without regard to technicalities. The Court went on to state that:
- “The Authority may thus be described as a low level specialist decision-making body which is uninhibited by strict procedural requirements.”
- [4] The Court (Travis J), then concluded that:
- “The first issue is whether that type of specialist decision-making body is to be bound by the decision of the Court of Appeal in *Binnie*. I am convinced that it is not.”
- [5] Judge Travis then stated that:
- “I accept Mr Wackrow’s submission that the Authority in carrying out its investigative role operates differently to conventional Courts and that there is nothing in the *Binnie* decision which suggest [sic] that its guidance on the principles to be applied for costs should extend to such an institution.”

- [6] More recently, a full Employment Court, in making a comparison between the criteria that is binding on that Court as against the Authority, when determining costs, held that:

“There is sufficient difference between the two institutions to warrant the Authority taking a different approach to the question of costs particularly because it, rather than the parties, conducts the investigation of the employment relationship problem brought to it.

In deciding costs, the Court has regard to costs reasonably incurred for the purposes of the Court hearing which is entirely adversarial in nature and, subject to judicial control, is conducted by and in a manner dictated by the parties. On the other hand, given its unique role in controlling its own investigations, the Authority must judge the reasonableness of the parties’ costs in the light of what ever procedure has been adopted. It is apparent that the Authority’s procedure may range from the formal to the informal and from at least part adversarial to inquisitorial and therefore the nature of the particular investigation meeting must be a relevant consideration to the exercise of the discretion to award costs.

Given this we are in agreement with Judge Travis in *Harwood v Next Homes Ltd* that the legislative intent is such that such considerations that are relevant to proceedings before the Court are not relevant to proceedings in the Authority. The unique nature of the Authority and its proceedings mean that parties to investigation meetings should not have the same expectations about procedure and costs as they have of the Court.”¹

- [7] In making submissions for the Applicant, Counsel also alluded to the role of the Authority, as compared with the Courts, and made reference to the usual awards made by the Authority. I also accept Mr Hope’s submission that the matters before the Authority pertaining to Mr Antram’s claims were not of a complex nature. Nonetheless, because of the historical basis to Mr Antram’s claim, coupled with issues surrounding whether Mr Antram was an employee or a contractor, there was some extra preparation required as compared with the usual wage arrears, or outstanding payments due, class of claim.
- [8] Taking into account the totality of the submissions, it seems to me that the discretion of the Authority to award costs should be exercised as follows. The investigation meeting occupied one day. Allowing for an average amount of time for preparation, the time factor can be assessed based on the following calculation:

By allowing a hearing time of 8 hours and using a multiplier of 2 for preparation – that is 16 hours. Using a reasonable hourly rate of \$250 a sum of \$4,000 is arrived at. Given the nature of the case overall, I conclude that the sum of \$2,600 would be a reasonable contribution to the costs incurred by the Respondent.

Determination

- [9] Mr Robert Antram is ordered to pay to AFFCO New Zealand Limited the sum of \$2,600.00.

Ken Anderson
Member
Employment Relations Authority

¹ *PBO Limited v Eneida Leonor Christo Da Cruz* 9 December 2005, AC2A/05.