

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 188/07
File Number 5071269

BETWEEN B & D Doors (NZ) Ltd
Applicant

AND Julian Paul Blaker
Respondent

Member of Authority: James Wilson

Representatives: Geoff Bevan for the applicant
Paul Pa'u for the respondent

Submissions received: 1 May 2007 from the applicant
10 May 2007 from the respondent

Determination: 22 June 2007

FURTHER COSTS DETERMINATION OF THE AUTHORITY

Background

[1] In a determination dated 16 February 2006 (AA 40/06) I found that Mr Blaker's dismissal from B & D Doors (NZ) Ltd was justified. On 14 July 2006 I issued a supplementary determination in which I ordered that Mr Blaker pay B & D Doors a total of \$1700 as a contribution towards their costs.

[2] In November 2006 B & D Doors filed an application with the Authority for an order requiring Mr Blaker to comply with the costs determination of 14 July 2006. It is germane to note that this application did not include an application for an award of costs in respect to the application for compliance.

[3] On 16 February 2007 I issued a further determination (AA 40/07) ordering Mr Blaker to comply with the costs determination.

[4] In the light of their successful application for compliance B & D Doors, by way of a letter from Mr Bevan dated 16 March 2007, requested that I make a further order for costs against Mr Blaker i.e. for the costs B & D Doors incurred in obtaining the compliance order.

The respective arguments

[5] Mr Bevan says that B & D Doors actual legal costs in obtaining the compliance order were \$1312 plus GST and, on behalf of his client, he seeks a contribution of \$870 plus the filing fee of \$70. Mr Bevan says that the application for compliance was made necessary by Mr Blaker's failure to pay the costs award, failure to apply for a stay and failure to make any sensible arrangement with B & D Doors to either defer payment or arrange instalments. Instead, he says, Mr Blaker simply failed to communicate with B & D Doors regarding the issue and ignored the costs determination. He argues that B & D Doors should be entitled to recoup a higher than normal contribution to its costs.

[6] Mr Pa'u, for Mr Blaker, advises that the original costs award is already the subject of a denovo challenge in the Employment Court. He points out that when B & D doors applied for a compliance order it did not seek costs and the Authority, when it subsequently issued a compliance order, made no order for costs. Mr Pa'u suggests that to award costs now that the matter has in effect been concluded would exceed the Authority's jurisdiction. He further argues that, even if the Authority is minded to exercise its jurisdiction, B & D doors request is excessive and unreasonable. He suggests that the application for compliance was a simple one which was done on the papers and there is no basis, on the accepted principles, for an award as high as that sort.

Discussion

[7] I have some sympathy for B & D Doors. Mr Blaker has repeatedly failed to either meet his financial obligations or to seek to negotiate some alternative arrangements -- either deferment or payment by instalments. He (or, perhaps more accurately, his representative) has conspicuously failed to communicate with B & D Doors and failed comply with the order made by the Authority or apply for a stay of

that order. If Mr Blaker had been more cooperative B & D Doors would almost certainly not have had to apply for a compliance order and incur the respondent costs. However B & D Doors did not, as part of its request for a compliance order, make a request for costs and nor was the question raised in Mr Bevan's submissions in support of that application.. The consequent determination made no order for costs and neither did it reserve the issue. I must therefore concur with Mr Pa'u's argument that the application for compliance was concluded by the issuing of the determination.

Determination

[8] B & D Doors application for compliance was concluded by the Authority's determination of 16 February 2007. There will be no order for costs.

James Wilson

Member of the Employment Relations Authority