Employment Court of New Zealand

Bennett v Bright Wood New Zealand Limited [2010] NZEmpC 74 (11 June 2010)

Last Updated: 16 June 2010

IN THE EMPLOYMENT COURT CHRISTCHURCH

[2010] NZEMPC74

CRC 30/09

IN THE MATTER OF a challenge to a determination of the

Employment Relations Authority

AND

IN THE MATTER OF an application for costs

BETWEEN MARGARET BENNETT Plaintiff

AND BRIGHT WOOD NEW ZEALAND LIMITED

Defendant

Hearing: on the papers - submissions received 26 April and 18 May 2010

Judgment: 11 June 2010

COSTS JUDGMENT OF JUDGE A A COUCH

[1] The plaintiff was employed by the defendant from January 2005 until February 2009. As a result of events which occurred in the latter part of 2008, the plaintiff raised and pursued personal grievances alleging that she had been disadvantaged in her employment by the unjustifiable actions of the defendant. After the plaintiff resigned in February 2009, she also pursued an allegation of constructive dismissal.

[2] These employment relationship problems were investigated by the Authority which gave its substantive determination on October 2009[1]. The Authority dismissed all of the plaintiff's claims. In a supplementary determination dated 16

November 2009[2], the Authority recorded an agreement between the parties that the

plaintiff would pay the defendant $750 for costs associated with the proceedings before the Authority.

[3] On 25 November 2009, the plaintiff commenced proceedings in the Court by way of a challenge to some aspects of the Authority's determination. A detailed statement of defence was duly filed on behalf of the defendant on 31 December

2009. Subsequently, the defendant filed an application to have the evidence of a witness taken overseas. At that point, the matter was set down for a telephone conference with me on 10 March 2010.

[4] Just before that conference was to be held, the plaintiff filed a notice of discontinuance. That effectively brought the substantive proceedings to an end but the defendant now seeks reimbursement of the costs it has incurred in defending the matter prior to its conclusion.

[5] On behalf of the defendant, Mr Rhodes has filed a document described as an application for costs but which also contains his submissions. In short, the defendant says that it has incurred costs and disbursements totalling $1,380.94 inclusive of GST and seeks full reimbursement of that sum.

[6] For the plaintiff, Ms Copeland has filed a memorandum containing submissions in support of a conclusion that costs should lie where they fall.

[7] The principles guiding the exercise of the Court's discretion to award costs are well known and need not be repeated here. I note only that, while I have regard to those principles, the power to award costs remains ultimately a matter of discretion and subject to the direction in s189 of the Employment Relations Act 2000 that the Court is to exercise its jurisdiction in equity and good conscience.

[8] Both Mr Rhodes and Ms Copeland have advanced multiple submissions in support of the conclusions they urge me to adopt. Without recording them all here, I confirm that I have fully considered those submissions. I note only Ms Copeland's submission that I cannot assess the extent to which the costs claimed by the defendant were actually and reasonably incurred because the necessary evidence has

not been provided. In many cases, that would be a very persuasive submission but, in this case where the sums involved are very modest, I am prepared to accept that the defendant has actually been charged for Mr Rhodes' services and, having regard to the documents filed and the inevitable overheads of advocacy, the amount charged is reasonable. I note also the letter dated 30 March 2010 attached to Ms Copeland's submissions in which, on behalf of the plaintiff, she effectively accepted that the defendant had incurred the costs claimed.

[9] As to the proportion of those costs which the plaintiff ought to pay, it is significant that the plaintiff's decision to unilaterally discontinue her proceedings is unexplained. In particular, there is no suggestion that some new information came to light which altered the plaintiff's perception of her chances of success or that her decision to discontinue was prompted by some other change in circumstances. That being so, the inevitable inference is that the plaintiff's challenge was without merit and that the defendant has been needlessly put to the cost of defending it.

[10] Some information relevant to the plaintiff's ability to pay has been provided but this falls well short of persuading me that payment of the sum sought would cause her undue hardship.

[11] Overall, I am very largely sympathetic to the defendant's claim but the circumstances fall a little short of justifying full reimbursement of the costs and disbursements incurred. I also proceed on the basis that the defendant is GST registered and that one ninth of the costs incurred have already been recovered through the company's GST returns.

[12] The plaintiff is ordered to pay the defendant $1,100 by way of costs and disbursements.

Signed at 2.30pm on 11 June 2010.

A A Couch
Judge

---

[1] CA 186/09

[2] CA 186A/09
