

advice. Noting that the respondent was seeking full indemnity costs Mr Holgate submitted for Mr Bolton that costs should lie where they fall or in the alternative a reasonable contribution to the respondent's costs would be \$3,000.00.

[4] In support of his submission Mr Holgate argued that costs ordinarily follow the result but depending on the nature of the proceedings, can be left to lie where they fall. He noted that any costs award should be modest, and that the Authority may apply a notional daily rate where this is not unjust. In relation to the specific facts of this case he noted that the proceeding concerned a single issue and involved 1 day of hearing. As for the determination, he argued that it was found to be finely balanced as to whether the applicant was an independent contractor or an employee. Finally he noted that there is no authority for citing loss of income as part of a costs claim.

Determination

[5] There is nothing at all remarkable about the question which fell to be determined in this case. As I noted in my determination at paragraph [20]:

“In most of the cases where the Authority is asked to determine the nature of a working relationship, that relationship contains features which are typically to be found in a contract of service (otherwise known as an employment agreement) as well as features typically found in a contract for services. It falls to the Authority to decide what the real nature of the relationship is notwithstanding the fact that it is often a sort of hybrid.”

[6] This was such a case. As well, the Authority's investigation in the matter proceeded along a path that was completely straightforward. This case does not warrant full solicitor client costs; neither is there any case to be made for costs to lie where they fall. The respondent is entitled to a reasonable contribution to costs in line with other similar cases¹.

[7] This was a preliminary matter and the issue for determination was narrow. The meeting took only a day. In these circumstances, the actual costs incurred are at the

¹ See AA26/07, 7 February 2007

higher end of what I would expect. The contribution suggested by Mr Holgate is reasonable and appropriate in all the circumstances.

[8] The applicant is therefore ordered to make a contribution of \$3,000.00 to the respondent's costs.

Yvonne Oldfield

Member of the Employment Relations Authority