

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Kevin Patrick Breen (Applicant)
AND Tulloch Transport Limited (Respondent)
REPRESENTATIVES Craig G Fletcher, Counsel for Applicant
Don Rhodes, Advocate for Respondent
MEMBER OF AUTHORITY James Crichton
SUBMISSIONS RECEIVED 31 August 2005
15 September 2005
DATE OF DETERMINATION 23 November 2005

COSTS DETERMINATION OF THE AUTHORITY

The application for costs

[1] By determination dated 3 August 2005, the Authority resolved the employment relationship problem between these parties by determining that Mr Breen had been disadvantaged by an unjustifiable action of Tulloch Transport Limited (TTL) and that Mr Breen had been unjustifiably dismissed by TTL.

[2] Costs were reserved by the Authority but the parties have been unable to resolve matters between them and accordingly the question of costs falls for determination.

The claim for costs

[3] Mr Breen through his counsel claims the sum of \$2,535 and he submits a careful breakdown of how that amount is arrived at.

[4] TTL, through its advocate, while acknowledging the principle that costs follow the event, seeks a lower award on the basis of –

- (a) The alleged unfairness of a claim for costs in respect to the mediation hearing; and
- (b) The allegation that, contrary to the applicant's claim, the hearing was not of 5 hour's duration; and
- (c) The contention that the respondent itself had witness expenses of \$1400 because its key witness was no longer in the employ of the respondent at the time of the investigation meeting.

The principles

[5] The principles that govern the awarding of costs in this jurisdiction have been usefully summarised in the Employment Court judgment of *Reid v New Zealand Fire Service Commission* [1995] 2 ERNZ 38.

[6] In a number of recent decisions, notably *Harwood v Next Homes Ltd* (unreported), AC 70/03, 19 December 2003, Travis J, and *Graham v Airways Corporation of New Zealand Ltd* (unreported) AA 39/04, 28 January 2004, Member Dumbleton, the average award of costs in the Authority is discussed.

[7] The principles that the Authority needs to consider are as follows –

- (a) The need to consider the reasonableness of any costs sought;
- (b) The general rule that costs should follow the event;
- (c) The fact that costs are discretionary;
- (d) The average awards for costs in respect to a one day investigation meeting will be between \$1,000 and \$1,500.

Determination

[8] This was a matter which was dealt with in a short investigation meeting which Mr Breen says was of 5 hour's duration but in fact was of 3 ½ hour's duration. Either way, a contribution of around a half day would in my opinion be appropriate.

[9] Accordingly, I award the applicant the sum of \$750 as a contribution to his costs in successfully prosecuting his claim in the Authority. I direct that the respondent make arrangements to pay that sum to the applicant.

James Crichton
Member of Employment Relations Authority