

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2015] NZERA Christchurch 63
5498163

	BETWEEN	BRIDGET BUCKNELL Applicant	
	AND	WOOLSTON STORE LIMITED Respondent	

Member of Authority:	Christine Hickey
Representatives:	Bridget Bucknell in person Tim McGinn, counsel for the respondent
Costs submissions received:	From the Applicant on 24 April 2015 From the Respondent on 11 May 2015
Determination:	14 May 2015

COSTS DETERMINATION OF THE AUTHORITY

[1] On 31 March 2015 I issued a determination that established that Ms Bucknell was not an employee of Woolston Store Limited.¹ Therefore her claims were not able to be heard by the Authority.

[2] The Authority's jurisdiction to make costs orders is found in clause 15 of Schedule 2 of the Act. Costs are at the discretion of the Authority.

[3] The Store, as the successful party, asks me to consider awarding a contribution towards its actual legal costs.

[4] The meeting took half a day so, if costs are to be awarded, the starting point would usually be \$1,750, which is the amount Mr McGinn submits Ms Bucknell should pay.

[5] In her written submissions Ms Bucknell says it will not be just if she needs to pay any of the Store's legal costs. She gave a number of reasons for that view.

¹ [2015] Christchurch NZERA 40

[6] Following legal advice Ms Bucknell originally filed her claim in the Disputes Tribunal. She submits:

At the Disputes Tribunal hearing [Cassels] welcomed me to bring my claim to the ERA as I believed I was acting as an employee and not as a 'contractor'. Sharon Lysaght herself said at that hearing that "we think it should be in the ERA also". Cassells were active in seeking that my claim be referred to the ERA. Yet they now assert that the very jurisdiction they have asked me to go, in fact has no jurisdiction to hear my claim. All of these arguments they had raised as to my status SHOULD have been raised at the Disputes Tribunal. Cassels should have asserted them then and there that the ERA was not the right forum, and the matter could have been determined by the Disputes Tribunal. Instead, they have in effect lured me to another jurisdiction only to claim that jurisdiction has no ability to determine the matter. If they were acting in good faith, they would have raised their claim of self-employed contractor then and then let the Disputes Tribunal whether or not their conduct was appropriate or lawful.²

[7] Mr McGinn correctly pointed out that Ms Bucknell's above submission contained new evidence. I considered it important to hear evidence on the issue of how the matter came to move from the Disputes Tribunal to the Authority.

[8] On 13 April 2015 I heard further evidence from Ms Bucknell and Ms Lysaght for Woolston Store. Ms Bucknell's evidence was that before filing her claim in the Disputes Tribunal she was advised by a family friend, who is a Queens Counsel, that the Disputes Tribunal was the correct place to file her claim. Ms Bucknell provided me with a copy of Woolston Store's written response to her Disputes Tribunal claim.

[9] Woolston Store's response was consistent with its response to Ms Bucknell's claim to be an employee in the Authority. Its position was that Ms Bucknell was never an employee but that if she insisted that she was the Authority was the appropriate forum to decide whether she was an employee or not. Ms Bucknell's view when she was at the Disputes Tribunal was (and remains) that she was an employee. The Disputes Referee advised Ms Bucknell that if she wished to continue to argue that she was an employee the Tribunal was not the appropriate forum and she would have to bring her claim in the Authority. Ms Bucknell decided to withdraw her claim from the Disputes Tribunal and lodge in the Authority.

[10] Woolston Store did not act in any way in bad faith. Its argument remained the same in the Authority as it was in the Disputes Tribunal. Ms Bucknell decided to

² Ms Bucknell's submission received 20 February 2015.

maintain her claim that she was an employee despite legal advice that she should be bringing her claim in the Disputes Tribunal.

[11] At the end of hearing evidence on 13 April 2015 I issued a direction granting Ms Bucknell an opportunity to make a submission on her financial position and on why the half day tariff should be reduced. I advised that Ms Bucknell's income and outgoings should be outlined in an affidavit. However, my explanation of what an affidavit is was perhaps not clear. Ms Bucknell was also advised to submit her view on whether if costs were to be awarded she should have an opportunity to pay the costs off over time.

[12] Ms Bucknell provided a sworn and witnessed statement, although not witnessed by any of the people authorised to witness an affidavit. She submitted that her average income from her part-time job is \$233.76 per week and that she paid \$180 per week in rent. Ms Bucknell did not file any bank statements as she had been advised to do by my direction. She submitted that she was simply unable to pay any contribution towards the Woolston Store's legal costs. She made no request to pay costs off over time.

[13] Woolston Store had until 1 May 2015 to make a written response. However, no response was received until 11 May 2015. Mr McGinn submitted that Ms Bucknell's evidence of the fact that she shares the rent commitment jointly with her husband means that his financial position should have been disclosed also. However, if the Authority was minded to accept Mr Bucknell's evidence as sufficient to establish her inability to pay then payment by way of instalments may well be the appropriate outcome.

[14] The Authority can take into account a party's financial circumstances in exercising its discretion when making an order for costs and may do so if a party would genuinely be unable to pay the costs. Despite Ms Bucknell's financial situation, for which I have some evidence, I am not satisfied by her submissions that she should not pay anything at all towards Woolston Store's costs. She was not an employee and had originally filed her claim in the correct venue; the Disputes Tribunal. Woolston Store was not represented, as it could not be, in the Disputes Tribunal and had the matter proceeded there even if Ms Bucknell was unsuccessful she would not have faced any claim for legal costs. Ms Bucknell did not ask to pay costs by way of instalments.

[15] However, Woolston Store was put to the expense of defending itself in the Authority instead where it was entitled to be legally represented. Woolston Store was entirely successful in the Authority. It is entitled to a reasonable contribution from

Ms Bucknell towards its legal costs. I consider the amount of \$1,750 is a reasonable contribution for this kind of case.

[16] Therefore, I determine that Bridget Bucknell must pay Woolston Store Limited the amount of \$1,750 in costs.

Christine Hickey

Member of the Employment Relations Authority