

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Canwest Radioworks Limited (Applicant)

**AND** Jason Reeves (Respondent)

**REPRESENTATIVES** Garry Pollak, counsel for applicant  
Mark Ryan, counsel for respondent

**MEMBER OF AUTHORITY** Alastair Dumbleton

**COSTS SUBMISSIONS** 23 December 2005 and 21 February 2006

**RECEIVED**

**DATE OF DETERMINATION** 8 March 2006

**DETERMINATION OF THE AUTHORITY AS TO COSTS**

[1] Although they have tried, the above-named parties have been unable themselves to resolve the question of costs that arose following the investigation the Authority conducted into an employment relationship problem directly concerning them. That problem was brought to the Authority by Canwest Radioworks Ltd (CRL) which sought a range of orders against Mr Jason Reeves, a former employee of the company, following the publication of a magazine story in which he featured.

[2] The matters investigated by the Authority are discussed fully in its determination dated 18 October 2005 and issued under AA 277A/05. The basis of the application was a claim by CRL that in speaking to the author of the magazine story, Mr Reeves had breached a contractual undertaking which was also embodied into an order of the Authority. That undertaking required that he not make comment to anyone about a personal grievance claim raised against CRL and that he had subsequently settled with the company. An earlier determination of the Authority dated 17 June 2005 and issued under AA 221/05 contains the Authority's orders and refers to the parties' settlement of the grievance.

[3] The Authority held in its later determination that in the circumstances of the case Mr Reeves had not breached his contractual obligation or the Authority's order. It held that there was no basis for making any orders against Mr Reeves. He now seeks an order for costs against CRL in respect of the investigation which concluded with the meeting held on 17 August 2005.

[4] Mr Reeves seeks costs on the rarely ordered full indemnity basis. Total costs incurred are submitted to have been \$14,462, including GST and disbursements. Copies of itemised accounts or invoices showing the detail of the work done by Mr Reeve's solicitors and the fees charged by them, have not been supplied as they should be whenever costs are sought on a solicitor-client or total indemnity basis.

[5] For its part CRL acknowledges that some award of costs against it is justified given the outcome of the case, but it submits that this is a case not for an award of full costs but only for a reasonable contribution to those, being an amount between \$1,000 to \$2,500.

[6] I consider that the Woman's Weekly story and its content on their face gave CRL reasonable grounds for thinking that Mr Reeves had commented about his grievance to the story's author, thereby breaching his undertaking and the Authority's order. I therefore agree with CRL's submission that its application for orders against Mr Reeve's was not lacking in merit or made without reasonable foundation. Participation in the preparation of the story published so soon after the settlement of Mr Reeve's high profile grievance was unwise, especially when he had not retained copy approval rights over what the magazine story would say about him. He ought to have realised there was a risk that the author of the story would naturally want it to say everything it could about Mr Reeves and his former colleagues at The Edge, that might conceivably be of interest to the magazine's diverse readership.

[7] The evidence was telling that the immediate reaction of Mr Reeves and his new employer Television New Zealand when shown the draft story before it went to print, had been to try to get the author to remove or change the parts that referred to his settled grievance claim. They could plainly see what CRL would make of the story and Mr Reeves should not have been surprised when the proceedings against him were duly brought to the Authority.

[8] CRL's proceedings were a reasonable response to publication of the story by calling Mr Reeves to account for his actions and seeking enforcement of the undertaking and orders. Determination of the case came down in the end to the evidence able to be given by Mr Reeves and others and the conclusions able to be drawn from that by the Authority. As it happened the Authority was satisfied that the degree of participation by Mr Reeves in the writing of the story had not placed him in breach. Publicity the grievance attracted had readily allowed the author to obtain information about it elsewhere than from Mr Reeves.

[9] As to whether the application, regardless of its factual merits, could not have succeeded because of a lack of jurisdiction by the Authority, I find it was reasonable for CRL to think that the Authority could in some way enforce the undertaking or its own orders and also rectify any damage caused to the company by any breach on the part of Mr Reeves. I referred in the substantive determination, at paragraph [34], to a recent Employment Court decision which concluded that there was such jurisdiction. For these reasons I conclude that this is not an appropriate case for awarding full solicitor-client costs.

[10] In fixing costs I take account of the Court's recent approval given to the principles the Authority has developed and has generally been applying since its inception in 2000. These are set out at paragraph [44] of the Full Court's judgment in *PBO Ltd v Da Cruz* unreported, 9 December 2005. Particular principles I give weight to are the need for equity and good conscience to be applied by the Authority, the relative modesty of awards that should be made by this unique investigative body and the desirability for reasonable consistency in awards made by it. In this last respect a notional daily rate may properly be recognised in fixing costs.

[11] The key to resolving this employment relationship problem lay in establishing the facts from the evidence. A number of witnesses were necessary but the evidence they needed to give was not complex. Believability of witnesses was more the issue than constructing the chain of events leading to publication of the magazine story about Mr Reeves and his travails.

[12] Mr Pollak notes that Mr Reeve's costs are significantly higher than CRL's. They do seem much higher than reasonable for preparing for the kind of exercise presented to the parties by this

particular investigation.

[13] Something above a notional rate applied to the day long investigation meeting seems justified, because in the end Mr Reeves, unwise though he may have been, was found to have done no wrong, and also because CRL with its knowledge of the media and the entertainment industry, perhaps should more readily have given Mr Reeves the benefit of the doubt and recognised that the journalism profession he was exposed to had been more concerned with selling magazines than with looking after Mr Reeves interests in discharging his undertaking not to make no comment about his settled grievance.

[14] I fix costs at \$3,750 including disbursements. CRL is ordered to pay that amount to Mr Reeves, pursuant to clause 15 of Schedule 2 of the Employment Relations Act.

A Dumbleton  
**Member of Employment Relations Authority**