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Cooper v ISO Limited and anor [2011] NZERA 282; [2011] NZERA Auckland 202 (13 May 2011)

Last Updated: 23 May 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2011] NZERA Auckland 202 5305476

BETWEEN

AND

AND

ANTHONY COOPER Applicant

ISO LIMITED

First Respondent

NEW ZEALAND

ASSOCIATES LIMITED Second Respondent

Member of Authority: Vicki Campbell

Representatives: No Appearance for Applicant Daniel Erickson for Respondent

Investigation Meeting: 11 May 2011

Determination: 13 May 2011

DETERMINATION OF THE AUTHORITY

A Mr Cooper has not established a personal grievance.

B Mr Cooper is ordered to pay to ISO Limited and New Zealand Associates Limited the sum of \$3,000 (which includes disbursements) as a contribution to its costs

[1] This written determination confirms an oral determination issued on 11 May 2011.

[2] Mr Cooper's original representative withdrew from this matter in September 2010. When the file was referred to me in September 2010 the parties had not attempted mediation, despite the respondents indicating a willingness to do so.

[3] Following advice that the Applicant was no longer represented, the Authority wrote to Mr Cooper on 17 September 2010 and requested him to contact the Authority

and advise the Authority of his intentions. This was because the Mediation Service had been unable to make contact with him to arrange mediation. The Authority's letter is recorded as having been received by Mr Cooper on 18 September 2010. Mr Cooper did not make contact with the Authority and on 22 October 2010, I wrote to the parties setting the matter down for an investigation meeting on 15 December

2010.

[4] On 22 October 2011 the respondents (and their representative) were granted leave to attend the investigation meeting by telephone. This was to save costs for the respondents in the event that Mr Cooper did not attend the investigation meeting.

[5] Two days before the investigation meeting was to take place Mr Cooper made contact with the Authority and applied to attend the investigation meeting by telephone conference. That application was declined and Mr Cooper was directed to attend the investigation meeting in person as set out in the Notice of Investigation Meeting.

[6] Mr Cooper attended the investigation meeting on 15 December 2010 but he was unable to provide a suitable explanation as to why he had not responded to the requests for communication by the Authority.

[7] Pursuant to [section 159\(c\)](#) of the [Employment Relations Act 2000](#), during the investigation meeting on 15 December 2010, I directed the parties to use mediation before 28 February 2011 and attempt in good faith to resolve the employment relationship problem.

[8] On 21 December 2010 the Mediation Service confirmed with both parties via email that mediation would occur on 10 February 2011. The venue for the mediation was changed at late notice and on 8 February 2011 the Mediation Service contacted Mr Cooper by telephone and advised him of the change of venue.

[9] According to the file notes, Mr Cooper denied any knowledge of the mediation to be held on 10 February 2011 and advised that due to his personal circumstances he was unable to attend on that date.

[10] The Mediation Service then attempted to arrange a second more suitable date however, it was unable to make any further contact with Mr Cooper despite writing to Mr Cooper and asking him to make contact. The failure by Mr Cooper to make contact with the Mediation Service and/or the Authority has been consistent throughout the time this file has been before the Authority.

[11] On 2 March 2011 the parties were directed to attend a second investigation meeting on 11 May 2011 and that attendances must be in person. Mr Cooper was directed to lodge a written statement of his evidence in the Authority by no later than 15 April 2011. Despite reminders being sent to him, Mr Cooper failed to adhere to this direction.

[12] Mr Cooper was advised in the notice of direction that if he failed to attend the second investigation meeting, the Authority may, without hearing evidence from him, issue a determination in favour of the respondent. Mr Cooper was also advised that if he failed to attend, costs may be awarded against him. A track and trace of the notices sent to Mr Cooper shows that the notices were delivered to his address and signed for, on 4 March 2011 at 9.55am. The notices were also sent to Mr Cooper via his email address.

[13] On the morning of the hearing, Mr Cooper failed to attend at the appointed time. The Authority contacted Mr Cooper to ascertain whether he had been delayed and advised him that he must attend before 10.30am or face the consequences of a determination being made in favour of the respondents.

[14] Mr Cooper did not attend by the appointed time. The Authority is satisfied Mr Cooper was properly and fully advised of his obligations to attend the investigation meeting and given an adequate opportunity to do so.

[15] That being the case I proceeded pursuant to clause 12 of Schedule 2 of the [Employment Relations Act 2000](#) to determine the matter.

[16] The respondent was advised that the claim of personal grievance had not been established and that costs would follow the event.

Costs

[17] The actual costs incurred by the respondents in defending this matter are \$8,079 plus disbursements of \$172.80.

[18] Mr Erickson produced a letter which the applicant had received on or about 26 April 2011 in which Mr Erickson sets out, on behalf of the respondents', concerns about Mr Cooper's intention to attend the investigation meeting. In his letter Mr Erickson advised Mr Cooper that if he did not intend to proceed with his claims he could formally withdraw his claims at that time and no claim for costs would be made against him.

[19] Mr Cooper was also advised by Mr Erickson that if the investigation meeting proceeded in his absence the letter would be produced and a claim for costs higher than usual contribution would be sought. Mr Cooper did not respond to the communications from Mr Erickson.

[20] Mr Erickson submitted that in view of the directions and the communications made to Mr Cooper a costs award in excess of the normal daily tariff of \$3,000 should be made.

[21] As a result of Mr Cooper's failures the Authority has been inconvenienced and resources devoted to a hearing which could have been made available to another party. He has also caused loss to the respondents and they are entitled to recover

its costs against him.

[22] In the principled exercise of my discretion I order Mr Cooper to pay to ISO Limited and New Zealand Associates Limited the sum of \$3,000 (which includes disbursements) as a contribution to its costs.

Vicki Campbell

Member of Employment Relations Authority

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