

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**WA 40A/08
5089986**

BETWEEN LEON ROPATA COOPER
 Applicant

AND LEVIN MEATS LIMITED
 Respondent

Member of Authority: Leon Robinson

Representatives: Donna Lima, Advocate for Applicant
 Andrew Bell, Counsel for Respondent

Determination: 1 May 2008

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] By a Determination dated 10 April 2008, I determined that the applicant Mr Leon Ropata Cooper ("Mr Cooper") had been unjustifiably dismissed. I declined to award him remedies because I considered the dismissal would have been justifiable had it not been for procedural infelicities. That being so Mr Cooper could not be said to have suffered any loss.

[2] Levin Meats Limited ("Levin Meats") by its counsel advises its costs exceed \$18,000 inclusive of GST and a further \$518.24 for various witness expenses. It is argued that Mr Cooper did not obtain any remedies from the Authority and therefore he must be regarded as unsuccessful. It is then said that because Levin Meats rebutted Mr Cooper's claim for remedy it is to be regarded the successful party and therefore entitled to an order for costs.

[3] Mr Bell informs the Authority of a letter dated 11 March 2008 sent to Mrs Lima and marked "without prejudice save as to costs". The letter advises, amongst other things, that Levin Meats would not be making any offer of settlement and sets out the lawyer's assessment of the risks for Mr Cooper proceeding with his claim having

regard to his credibility and contribution. The offer made to Mr Cooper is that if he withdrew his claim Levin Meats would not pursue costs against him.

[4] Ms Lima for her son Mr Cooper, provides the Authority with a narration of her services but makes no submissions.

[5] This investigation meeting proceeded over one day at Palmerston North. At the conclusion of the meeting both representatives addressed the Authority by submissions.

[6] The exercise of my discretion calls for a determination of what is a fair and reasonable contribution as between the parties. The Authority adopts a principled approach taking into account relevant matters and having no regard for irrelevant ones.

[7] The general rule is that costs follow the event. A successful party is entitled to a contribution to its costs. It is necessary to correctly determine which party was the successful one. This is because while Mr Cooper was determined by the Authority to have been unjustifiably dismissed, he was not awarded any remedies by way of resolution.

[8] I do not agree that simply because Mr Cooper did not succeed in obtaining remedies that he is to be regarded as unsuccessful. I regard it undoubted that a finding that a dismissal was unjustifiable is a declaration of considerable worth to an aggrieved party. Such a declaration and the impact of it can never be underestimated. The declaration that Mr Cooper was unjustifiably dismissed is to be taken into account and cannot be ignored.

[9] Mr Cooper was successful in his bid to have his dismissal found to be unjustifiable. As a matter of equity and good conscience he was not deemed worthy of remedy. It can be said that Mr Cooper succeeded in his personal grievance and Levin Meats succeeded in resisting his claim for remedy. In that way, both parties

succeeded in equal part. In those circumstances I consider it proper that both parties bear their own costs.

[10] Accordingly, exercising my discretion on a principled basis and for the reasons outlined above, **I order that neither party shall have costs against the other.**

Leon Robinson
Member of Employment Relations Authority