

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 95A/08
5094944

BETWEEN TONY FANTO
 Applicant

AND PACIFIC FLIGHT CATERING
 LIMITED
 Respondent

Member of Authority: R A Monaghan

Representatives: Tony Fanto, in person
 G Gorgner, advocate for Respondent

Submissions received: 9 April 2008 from Applicant
 3 and 14 April 2008 from Respondent

Determination: 15 April 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination in the above, dated 17 March 2008, I found Mr Fanto did not have a personal grievance as that term is defined in the Employment Relations Act. Costs were reserved and the parties have filed statements of their positions.

[2] As the successful party PFCL is entitled to seek a contribution to its costs. Mr Fanto was not successful, and has provided no grounds on which an award of costs could be made in his favour. Moreover, most of the claim he has made in respect of costs amounts to a claim for further compensation and would not in any event be taken into account.

[3] Ms Gorgner has cited a figure of \$7,000, comprising legal costs of \$5,400, witnesses' costs of \$1,100 and costs of \$500 associated with her involvement.

[4] While I understand legal advice was obtained in the period up to and including July 2007, that advice must have related to the handling of Mr Fanto's complaint. It preceded the bringing of any legal action and was not directly related to the legal action, and cannot be addressed in costs. Further, nothing in the way the matter was presented in the Authority suggested legal advice was being provided in that respect, and there was no other information to suggest otherwise. Accordingly there will be no order for a contribution to legal costs.

[5] Witnesses are entitled to have expenses such as travelling expenses taken into account in an assessment of costs, but the expenses claimed here appeared to concern the cost to PFCL of providing cover as a result of certain witnesses' unavailability for work. In the absence of any further information regarding what was intended by the claim for costs in that respect, there will be no order for the reimbursement of costs for the attendance of witnesses.

[6] Ms Gorgner acted as advocate for the company, and prepared and presented its case. Her involvement amounts to the expenditure of executive time to an extent that can be reflected in costs. There was no indication of how the amount of \$500 was calculated, but in the circumstances it appears fair.

[7] Mr Fanto is therefore ordered to contribute to PFCL's costs in the sum of \$500.

R A Monaghan

Member of the Employment Relations Authority