

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Francis Weston t/a Sportscar World (Applicant)

AND Gary Fraser (Respondent)

REPRESENTATIVES N R Harding for Mr Weston
MWS Nutsford for Mr Fraser

MEMBER OF AUTHORITY P R Stapp

SUBMISSIONS 1 December 2006, 10 January 2007

DATE OF DETERMINATION 15 February 2007

COSTS DETERMINATION OF THE AUTHORITY

[1] Mr Fraser has claimed \$2,316.15 actual costs to defend the Applicant's claim to reopen the Authority's original investigation of an employment relationship problem. The application to reopen was declined on the papers. Mr Fraser was successful in defending the matter. Moreover Mr Weston wholly failed to satisfy the Authority of any need to reopen an investigation meeting.

[2] Mr Weston has asked that costs lie where the fall or if any award is made it should not exceed one third contribution.

[3] The application to re-open the investigation meeting always faced a hurdle upon the grounds relied upon. Its chances of success were minimal to the extent that it should not have been pursued. In this regard costs follow the event because Mr Fraser has been put to the cost of defending the matter from a principled position. The costs were unnecessary because of the application and its lack of any chances of any success. Therefore, I reject the submission from Mr Weston's representative that the parties should meet their own costs. Also, I reject his submission that any contribution should be restricted to one third. No issue has been taken with the amount and the component parts of the actual claim for what was involved. The account seems fair and reasonable to serve as the basis of a claim for a contribution towards costs in the matter.

[4] I accept that both parties have been put to the expense of the application but that is of Mr Weston's own making in pursuing an application with little chance of success and by losing his application. The matter was determined on the papers. I assess an appropriate contribution to be fixed at two thirds of the costs claimed.

[5] Mr Weston's representative has also advanced the argument that Mr Fraser's interests are protected by a challenge being made in the Employment Court, made by Mr Weston, on the substantive matter that he wanted reopened. He says that if Mr Fraser is successful, then he will be well and truly compensated from an amount of money from the earlier remedies required to be put into the Court. That is staggering because Mr Fraser has been put to the unnecessary costs of a reopening application which is an entirely separate matter to the proceedings challenged in the Court. In other words Mr Weston is suggesting that Mr Fraser's remedies in the earlier proceedings should absorb the costs of the reopening application that have not been of his making. I reject the submission entirely.

[6] It is my decision that Francis Weston t/a Sportscar World is required to pay Gary Fraser the contribution of \$1,544.10 for costs and disbursements of \$58.80.

P R Stapp
Member of the Authority