



Employment Court of New Zealand

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Fredericks v VIP Frames and Trusses Limited [2016] NZEmpC 10 (16 February 2016)

Last Updated: 1 March 2016

IN THE EMPLOYMENT COURT CHRISTCHURCH

[\[2016\] NZEmpC 10](#)

EMPC 31/2015

IN THE MATTER OF a challenge to a determination of the
 Employment Relations Authority

AND IN THE MATTER of an application for costs

BETWEEN LYNDON FREDERICKS Plaintiff

AND VIP FRAMES AND TRUSSES LIMITED
 Defendant

Hearing: By memoranda filed by the plaintiff on 8 December
 2015 and
 by the defendant on 23 December 2015

Appearances: D Beck, D Mills-Godinet and R Boulton, counsel for
 plaintiff
 A Toohey, counsel for defendant

Judgment: 16 February 2016

COSTS JUDGMENT OF JUDGE M E PERKINS

Introduction

[1] In a judgment dated 17 November 2015,¹ the Court dealt with a challenge by

Lyndon Fredericks against a determination of the Employment Relations Authority.²

Mr Fredericks was primarily unsuccessful in his challenge relating to his claims against VIP Frames and Trusses Ltd (VIP) to have been constructively dismissed. He was also unsuccessful in his challenge relating to disadvantage grievances and claims for penalties. He did succeed in his challenge to have his compensation

increased for being disadvantaged by VIP's failure to provide a safe workplace (a

¹ *Fredericks v VIP Frames and Trusses Ltd* [2015] NZEmpC 203.

² *Fredericks v VIP Frames & Trusses Ltd* [2015] NZERA Christchurch 2 (substantive); *Fredericks v*

VIP Frames & Trusses Ltd [2015] NZERA Christchurch 95 (costs).

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claim VIP admitted prior to the hearing) and VIP's failure to deal appropriately with

Mr Fredericks' rehabilitation.

[2] Costs were reserved to enable the parties to attempt to resolve this issue between themselves. Surprisingly, they have been unable

to do so and submissions from counsel on the question of costs have now been received.

[3] Mr Fredericks was in receipt of a grant of legal aid for the Court hearing only. In a determination of the Authority dated 14 July 2015 he was awarded costs of \$5,845. That determination is not the subject of a challenge. VIP, through its counsel, indicates that that award of costs will be paid to Mr Fredericks.

[4] Mr Fredericks seeks a contribution towards the total bill charged to Legal Aid, amounting to \$12,116.05. It is submitted on his behalf that unless a contribution is made, Mr Fredericks' awards on those parts of his claim where he was successful will become illusory.

[5] For VIP it is submitted that costs should lie where they fall on the basis that each of the parties has been successful to some extent.³

[6] The principles as to costs in the Employment Court are well established in decisions of the Court of Appeal.⁴ Costs will generally follow the event and be awarded to the successful party. The starting point for the quantum of such costs is two-thirds of actual and reasonable costs incurred. However, in a situation where each of the parties has been successful, it is not necessarily easy to determine whether either party is entitled presumptively to costs. In the present case, while Mr Fredericks was successful in having his compensation increased, he was not successful in his more substantial claims. If Mr Fredericks had been successful in

his claims to have been constructively dismissed, and in his other disadvantage

grievances and the penalties claim, then VIP would have been liable for a

3 In reliance on *Health Waikato Ltd v Elmsly* [2004] NZCA 35; [2004] 1 ERNZ 172 (CA); and *White v Auckland District Health Board* [2008] NZCA 451, [2008] ERNZ 635.

4 *Victoria University of Wellington v Alton-Lee* [2001] NZCA 313; [2001] ERNZ 305 (CA), *Binnie v Pacific Health Ltd* [2003] NZCA 69; [2002] 1 ERNZ 438 (CA); and *Health Waikato Ltd v Elmsly*, above n 1.

substantially greater amount. VIP succeeded in defending those more substantial

parts of Mr Fredericks' claim.

[7] While it relates to a completely different head of damage, Mr Fredericks, as a victim of VIP's offending under the [Health and Safety in Employment Act 1992](#), was awarded a reasonably substantial amount of reparation pursuant to the [Sentencing Act 2002](#). That award was disregarded in consideration of the remedies to which Mr Fredericks would be entitled under the [Employment Relations Act 2000](#). However, as he has made a submission now on the issue of costs, claiming that if he is not awarded a contribution to costs, remedies awarded to him under the Act would be illusory, the reparation has some relevance.

[8] The Court has a wide discretion on costs. Mr Fredericks chose to challenge a well reasoned determination of an experienced member of the Authority and in circumstances where VIP even at the conclusion of the hearing in the Court remained desirous of reinstating him to its employment. In all the circumstances it is appropriate that the Court exercise its discretion to order that each of the parties should bear their own costs. Accordingly, no award of costs will be made to either party.

M E Perkins

Judge

Judgment signed at 10 am on 16 February 2016

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