

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN William David Gittoes (Applicant)

AND Gorrie Fuel (SI) Limited (First Respondent)
AND Don Gorrie (Second Respondent)

REPRESENTATIVES Timothy J Twomey, Counsel for Applicant
Don Gorrie for First and Second Respondent

MEMBER OF AUTHORITY Philip Cheyne

SUBMISSIONS RECEIVED 19 June 2006
7 August 2006

DATE OF DETERMINATION 7 August 2006

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 2 May 2006, I upheld a claim by Mr Gittoes for arrears of wages and holiday pay, found that he had a personal grievance against his former employer and awarded him compensation for lost remuneration and distress. Costs were reserved.

[2] On 19 June 2006, the Authority received a memorandum on costs on behalf of Mr Gittoes. Counsel also advised that there had been no response from Gorrie Fuel (SI) Limited to his correspondence seeking an agreement on costs. The Authority sent a copy of the memorandum to Gorrie Fuel (SI) Limited at the address earlier used by the Authority for correspondence with the respondent, asking for any memorandum in response within 14 days after which the Authority would make a determination on costs. There was no response from Gorrie Fuel (SI) Limited. The Authority contacted Mr Gorrie who acknowledged receipt of the Authority's earlier correspondence. Mr Gorrie belatedly lodged a memorandum. This determination resolves the reserved point about costs.

[3] The first question is whether Mr Gittoes should receive an award of costs. Gorrie Fuel (SI) Limited says that costs should be dealt with by the Employment Court, a challenge having been lodged against the earlier determination. The usual approach is for the Authority to determine costs irrespective of whether there is a challenge. Mr Gittoes was successful in the proceedings although the outcome was less than the claim. That is no different from the outcome for most successful applicants. He incurred legal costs in having his problem resolved by the Authority and I can see no reason why costs should not follow the event.

[4] The next question is the appropriate level of costs. Counsel refers me to well known principles and cases and makes a number of comments about the way in which the case was conducted, the conduct of the parties at the meeting, the importance of the case to the parties, the amount of time required for effective preparation and whether technical or legalistic points were needlessly taken. I agree with those points but it is not necessary to repeat them all here. Gorrie

Fuel (SI) Limited says that counsel for the applicant prolonged the proceedings in a blameworthy way but I do not accept that claim.

[5] Part of the claim was for arrears of wages and holiday pay. That is money that should have been paid to Mr Gittoes without him having to incur legal costs, even on the facts advanced by Gorrie Fuel (SI) Limited. If I was able to accurately identify the necessary costs solely associated with that aspect of the claim, I would order them to be paid in full. The remainder of the problem was a personal grievance and the proper approach is to order payment of a reasonable contribution.

[6] Mr Gittoes is legally aided and I am told that the grant is \$2,115.00 although there is an application as yet undecided to increase that to \$2,635.00.

[7] The meeting occupied about an hour less than a day's meeting time taking account of a shorter than usual lunch break. The meeting time was lengthened by the respondent's failure to comply with directions about disclosure of relevant documents in advance. The matter probably could have been a half day meeting without the delay caused by the respondent so the applicant was caused extra costs. On a matter such as this only one phone conference should have been necessary but a second conference was required because of the respondent's failure to comply with directions. I mention these matters not to punish the respondent but to indicate that these are extra costs that the applicant should not be responsible for.

[8] In all these circumstances, I order the respondent to pay the applicant \$2,000.00 as a contribution to his legal costs plus \$70.00 to reimburse the lodgement fee.

Philip Cheyne
Member of Employment Relations Authority