



# Employment Court of New Zealand

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## Harris v Charter Trucks Limited CC 16A/07 [2007] NZEmpC 166 (19 December 2007)

Last Updated: 22 December 2007

### IN THE EMPLOYMENT COURT

CHRISTCHURCHCC 16A/07CRC 8/06

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

AND

IN THE MATTER OF an application for costs

BETWEEN RUSSELL WAYNE RICHARD HARRIS

Plaintiff

AND CHARTER TRUCKS LIMITED

Defendant

Hearing: Memoranda received 2, 8 and 15 October 2007

Judgment: 19 December 2007

### COSTS JUDGMENT OF JUDGE A A COUCH

[1] In my substantive judgment (CC 16/07, 11 September 2007), I said that the plaintiff was entitled to a contribution to the costs and disbursements he incurred in relation to the proceedings before the Authority and the Court. I encouraged the parties to agree costs if possible or, if unable to do so, to file memoranda. That is what they have now done.

[2] Mr Beck provided two memoranda. In the first, he advanced a claim for \$3,000 costs for the Authority proceedings and \$5,309.62 for the Court proceedings. Attached were copies of documents showing that these costs had been incurred by Mr Harris. In the second memorandum, Mr Beck provided copies of further documents verifying the costs incurred in respect of the Court proceedings.

[3] Mr James provided a memorandum in reply. This proceeded on the basis of an obvious misunderstanding of Mr Beck's first memorandum. In fairness to the defendant, therefore, I do not take at face value the apparent agreement to an award of \$3,000 in respect of the Authority proceedings. What I understand the memorandum to say is that the defendant submits that appropriate awards of costs would be \$1,250 for the Authority proceedings and \$3,000 for the Court proceedings.

Costs in the Authority

[4] In its costs determination (CA 41A/06, 24 May 2006), the Authority ordered Mr Harris to make a contribution of \$1,250 to the defendant's costs. This was on the basis that the investigation meeting took 5 hours and involved the evidence of only one witness for each party. The Authority referred, however, to a "notional daily rate" of between \$2,000 and \$2,500 for "a simple matter of this kind." As 5 hours amounts to most of a hearing day, the very modest award of costs actually made suggests that the Authority also took into account Mr Harris's limited means to pay. This was a factor relied on by the then advocate for Mr Harris in his submission that costs should lie where they fell.

[5] There is no suggestion that the defendant is impecunious. Putting that factor aside and applying the principles enunciated in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] NZEmpC 144; [2005] ERNZ 808, I conclude that an appropriate award of costs with respect to the Authority proceedings is \$2,000. The defendant is ordered to pay Mr Harris that sum.

#### Costs in the Court

[6] For the proceedings in the Court, Mr Harris was legally aided. The total grant of legal aid made and used was \$5,109.62. Mr Harris has now repaid that sum in full to the Legal Services Agency. I note that the correspondence provided by Mr Beck shows that this sum included a disbursement of \$50.62 for a process server. A disbursement of \$50 for "office disbursements" was also included but, as this did not involve payment to a third party, I treat this in the same manner as costs.

[7] In addition to the costs and disbursements forming part of the legal aid grant, Mr Harris also incurred a disbursement of \$200 for a filing fee. Mr James submitted that this ought not to be allowed as Mr Harris could have applied for a waiver of this fee. What this submission overlooked is that, unlike most other courts, there is no provision enabling fees in the Employment Court to be waived. In any event, the fact is that the filing fee was paid by Mr Harris and payment of it was necessary for his claim.

[8] On this basis, I find that Mr Harris actually incurred \$5,059 as costs and \$250.62 as disbursements.

[9] Mr Beck sought an award of the whole of the costs incurred by Mr Harris "on the grounds that the defendant's conduct in selecting him for redundancy was grossly procedurally unfair and could have been avoided." This submission misunderstands the purpose of an award of costs which is to compensate a party for the cost of litigation. That may involve consideration of the manner in which a party has conducted the litigation. It is, however, quite separate and distinct from the conduct of the party which gives rise to the litigation. That is dealt with by remedies. To take account of that conduct again in the context of costs would be to punish the unsuccessful party twice or compensate the successful party twice.

[10] The usual starting point for assessing an appropriate award of costs in the Court is two-thirds of the costs actually and reasonably incurred together with reimbursement in full of disbursements necessarily incurred. From that point, the figure for costs may be adjusted up or down to reflect the manner in which the parties conducted the litigation.

[11] Given the careful attention paid by the Legal Services Agency to grants of legal aid, I have no difficulty in finding that the costs incurred by Mr Harris were reasonably incurred in their entirety. Equally, the disbursements were both necessarily incurred.

[12] I did not discern any aspects of the hearing which suggest that any adjustment to the starting point for costs need be made and neither party suggested that there were any. I therefore see no reason to depart from the starting point of two-thirds of the costs actually incurred by Mr Harris together with reimbursement of the disbursements actually incurred.

[13] With respect to the Court proceedings, the defendant is therefore ordered to pay Mr Harris \$3,373 by way of costs and \$250.62 by way of disbursements.

#### Conclusion

[14] In summary, the defendant is ordered to pay Mr Harris \$5,373 for costs and \$250.62 for disbursements.

A A Couch  
Judge

Judgment signed at 12.10 pm on 19 December 2007