

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 131A/10
5276598

BETWEEN JACOB DEMOLITION &
 BUILDING SUPPLIES
 LIMITED
 Applicant

AND PAUL CLOTWORTHY
 Respondent

Member of Authority: G J Wood
Submissions Received By 3 May 2010
Determination: 13 May 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In my substantive determination, I found that the respondent, Mr Paul Clotworthy, was to pay to the applicant, Jacob Demolition and Building Supplies Limited, the sum of \$972.72 net. Jacob Demolition had claimed \$2,621.73, but Mr Clotworthy was successful in having that sum reduced by way of a set-off for unpaid notice.

[2] Jacob Demolition now seeks a sum of in excess of \$2,000 for legal expenses incurred in pursuing the claim. Mr Clotworthy noted that the Authority had indicated at the investigation meeting that it would be unlikely that either party would be awarded costs. He then noted that the legal costs claimed were far in excess of the actual amount ordered.

[3] Mr Clotworthy's recollection of the Authority's comments made at the investigation meeting about costs is correct. The reason for that comment was that, no doubt for genuine financial reasons, Jacob Demolition had ceased to use its lawyers to pursue the employment relationship problem after the filing of the statement of problem. The general rule in the Authority is that costs are not

recoverable where, as here, a representative is employed by a party and his principal role was that of client or principal witness. In this case Mr Winston Jacob, its principal, represented Jacob Demolition and was its sole witness. In any event, there is no claim for executive time in this case. There is simply a claim for legal costs. Those legal costs were incurred before the Authority commenced its investigation. In addition, this was a straightforward claim concerning overpayment of holiday pay. Therefore I conclude that the costs sought are not recoverable in the Authority.

[4] Furthermore, Jacob Demolition was not successful to the full extent that it claimed, but rather was only successful in recovering just over a third of the amount claimed. It therefore could be said that Mr Clotworthy had been successful in as much a degree as Jacob Demolition.

[5] I therefore order costs to lie where they fall.

G J Wood
Member of the Employment Relations Authority