



Employment Court of New Zealand

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Keepa v Go Bus Transport Limited [2015] NZEmpC 207 (25 November 2015)

Last Updated: 1 December 2015

IN THE EMPLOYMENT COURT AUCKLAND

[\[2015\] NZEmpC 207](#)

ARC 59/13

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

AND IN THE MATTER of an application for costs

BETWEEN GRAHAM KEEPA Plaintiff

AND GO BUS TRANSPORT LIMITED
 Defendant

Hearing: By memorandum of the defendant on 22 October 2015
 (No memorandum filed by the plaintiff within timeframe
 directed)

Appearances: G McKinstry, advocate for plaintiff (indicating to the
 Court that he has no instructions on costs matter)
 J Lomas and S-J Davies, counsel for defendant

Judgment: 25 November 2015

COSTS JUDGMENT OF JUDGE M E PERKINS

[1] In a judgment dated 12 October 2015¹ Mr Keepa's challenge to a determination of the Employment Relations Authority² (the Authority) was unsuccessful.

[2] The matter of costs was reserved to enable the parties to make submissions to the Court.

[3] The successful defendant filed a memorandum in respect of costs on 22

October 2015. Mr Keepa has not filed any submissions on costs within the time

specified. In correspondence between the Court Registry staff and Mr Keepa's

¹ *Keepa v Go Bus Transport Ltd* [\[2015\] NZEmpC 180](#).

² *Keepa v Go Bus Transport Ltd* [\[2013\] NZERA 287](#).

advocate, it has been indicated that Mr Keepa has not given his advocate any instructions on the matter of costs.

[4] In respect of the proceedings before the Authority, Mr Keepa was also unsuccessful and was ordered to make a contribution of \$3,500 towards the costs of Go Bus Transport Limited (Go Bus) in defending those proceedings. That award was confirmed in the judgment of the Court on 12 October 2015.

[5] The Court has a wide discretion on the matter of costs. The Court generally relies upon the principles established in three Court of Appeal decisions.³ Principles which generally apply are that costs will follow the event, and as a rule of thumb a starting point of two-

thirds of actual and reasonable costs incurred by the successful party will apply.

[6] In exercising the discretion, the Court may have regard to the financial position of the party against whom an award of costs is to be made. However, in this particular case no information is available to the Court as to Mr Keepa's financial position, although in all of the circumstances which emerged during the course of these proceedings it could be inferred that he is not in a strong financial position. Nevertheless, it appears that he has chosen not to instruct his advocate to make any submissions on costs and the Court therefore has very limited information about his financial position.

[7] Counsel for Go Bus in their submissions on costs have set out details of the actual costs incurred in defending the challenge. They have quite properly conceded that while two counsel represented the defendant at the hearing, the case was capable of being presented by one counsel. They have made an appropriate discount to take this into account. Having regard to that appropriate discount it is submitted by them that the sum of \$20,000 would be a proper award of costs against actual and reasonable costs approximating \$30,000. The sum of \$3,000 for GST is claimed although it is not the practice of the Court to award GST in making an award for

costs. Insofar as disbursements are concerned, as the head office of the defendant

3 *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* [2004] NZCA 35; [2004] 1 ERNZ 172 (CA).

company is situated in Hamilton it is submitted that it was appropriate for counsel from Hamilton to be employed, even though the hearing was conducted in Tauranga. Disbursements therefore include counsel accommodation costs and travel expenses. Such costs for only one counsel have been claimed.

[8] Prior to the hearing attendances were required in respect of interlocutory applications. The hearing of this matter in Tauranga lasted for two days. There would have been reasonably substantial preparation for the hearing in view of the nature of the claim which was being made by Mr Keepa. In addition, following the hearing, counsel needed to attend to the preparation of legal submissions in answer to those provided on behalf of Mr Keepa.

[9] In all of the circumstances the claim for a contribution of \$20,000 towards costs is reasonable. There is an order that Mr Keepa contribute the sum of \$20,000 towards the costs of Go Bus. In addition he is ordered to reimburse Go Bus the sum of \$1,369.49 being disbursements reasonably incurred.

M E Perkins

Judge

Judgment signed at 12.45 pm on Wednesday 25 November 2015

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