

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Anthony McCall (Applicant)  
**AND** H & Y International (NZ) Limited (Respondent)  
**REPRESENTATIVES** Clive Bennett, Advocate for Applicant  
Paul Tremewan, Advocate for Respondent  
**MEMBER OF AUTHORITY** Marija Urlich  
**INVESTIGATION MEETING** 9 September 2004  
22 September 2004  
**DATE OF DETERMINATION** 23 February 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] In my determination of 29 November 2004, I found the applicant was not successful in his claim that he was an employee of the respondent. Costs were reserved and I invited the parties to attempt to resolve this issue themselves.

[2] On 23 December 2004 the Authority received the respondent's memorandum of costs.

[3] No memorandum of costs has been received from the applicant despite his being granted an extension until 1 February 2005 within which to file such.

[4] In his submissions on costs Mr Tremewan advises the total costs incurred by the respondent in defending the applicant's claim were \$7056.25 including GST. This figure is substantiated by supporting documentation and includes \$1830.62 incurred in attending mediation, for which no award of costs can be made. Mr Tremewan submits an order for costs to the sum of \$5000.00 should be made in favour of the respondent for the following reasons; the respondent has been consistent in its position the applicant was not an employee and this position was upheld by the Authority, the respondent made reasonable efforts to settle this matter before investigation, the costs incurred were reasonable and the investigation was unnecessarily extended due to the applicant's allegations regarding the respondent's applications to professional associations.

[5] I am of the view this is an appropriate case for an award of costs. The case was important to both parties but was not a particularly complex matter. The investigation meeting was concluded in a day and half with written closing submissions subsequently filed. In all the circumstances and taking into account the principles relating to costs as set out in *New Zealand Airline Pilots Association v The Registrar of Unions* [1989] 2 NZILR 550 and *Reid v Fire Services Commission* [1995] 2 ERNZ 38 I am of the view that an appropriate award of costs including disbursements is \$2000.00 including disbursements.

[6] I order Anthony McCall to pay to H&Y International (NZ) Limited the sum of \$2000.00 as a contribution to its costs and disbursements.

Marija Urlich  
Member of Employment Relations Authority