

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 178A/09
5276268

BETWEEN SEAN MCFADGEN
Applicant
AND DENNIS INDUSTRIES
LIMITED
Respondent

Member of Authority: Philip Cheyne
Representatives: Justine Baird, Counsel for Applicant
Nick Dennis, Advocate for Respondent
Submissions Received: 18 December 2009 from the respondent
18 December 2009 from the applicant
Determination: 22 December 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 16 October 2009 I found that Mr McFadgen had not raised a grievance within time and there were no exceptional circumstances so as to permit a grant of leave for him to raise a grievance out of time. Costs were reserved. Counsel for Mr McFadgen was asked to confirm whether there had been a grant of legal aid as soon as she could and any claim for costs was to be made within 14 days of that confirmation with any reply within a further 14 days.

[2] On 3 November 2009 counsel for the applicant confirmed that he had been granted legal aid. That information was conveyed to the respondent. On 16 November 2009 the respondent notified the Authority by email that it wanted to recover costs and asked what needed to be done. The same day the Authority's support officer replied saying that submissions outlining what was wanted and why needed to be lodged with the Authority and served on the applicant. No submissions were received until 18 December when there was an email asking for costs to cover

time gathering evidence and sorting out paperwork as well as their solicitor's bill, a copy of which was attached. Counsel for the applicant promptly replied noting that the costs submissions were now out of time.

[3] In the ordinary course of events I would consider an application for costs because the respondent originally asked for costs within time and it seems that their solicitor's bill was not received until a few days before the most recent email to the Authority. The real difficulty for the respondent in the present case is that Mr McFadgen has been granted legal aid. Section 40(2) of the Legal Services Act 2000 provides that no order for costs may be made against a legally aided person in civil proceedings unless the Authority is satisfied that there are exceptional circumstances. I am satisfied that there are no exceptional circumstances in the present case.

[4] As a result, no order for costs can be made against Mr McFadgen.

Philip Cheyne
Member of the Employment Relations Authority