

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 91/10
5282245

BETWEEN STEPHEN ROBERT MOORE
 Applicant

AND NEW ZEALAND MINT
 LIMITED
 Respondent

Member of Authority: Alastair Dumbleton

Submissions Received 12 and 13 January 2010

Determination: 1 March 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] Mr Stephen Moore has applied for an award of costs following the resolution of the employment relationship problem he brought to the Authority.

[2] In his claim, as outlined in the statement of problem lodged with the Authority, he sought to recover \$5,625.00, as well as interest on that sum and solicitors costs and expenses as detailed by him.

[3] The respondent company New Zealand Mint Ltd without lodging a statement in reply readily admitted in correspondence to the Authority that it owed the money and would pay it to Mr Moore. Eventually this was done and Mr Moore is satisfied that he has received the outstanding \$5,625.00. To conclude the resolution of his problem he now seeks an award of costs and interest on that sum.

[4] Solicitors fees, office charges and disbursements were \$2,050 billed to Mr Moore, and a further unbilled sum of \$170.00 relating to correspondence concerning the payment eventually made and this application for costs. An award of costs is sought at an indemnity level or on such other basis as the Authority considers just.

[5] I am satisfied that in the circumstances the Authority has no power to make an award of interest. Under clause 11 of Schedule 2 of the Employment Relations Act 2000 there must first have been a determination and/or "*judgment*" for the sum claimed. In the circumstances the Authority was not required to make a determination or give any judgment.

[6] Mr Moore is however entitled to consideration of his claim for costs.

[7] I can find no basis for awarding solicitor-client costs. The total costs billed to Mr Moore, apart from the further \$170, were incurred up to the lodging of the statement of problem. The respondent's actions in not taking the step of lodging a statement in reply, while a failure to comply with the Authority's requirement did not add to the costs. At best that failure might have led to further orders being made by the Authority affecting the respondent's participation in the investigation.

[8] The applicant had an opportunity to try and resolve this matter in mediation before lodging papers with the Authority, and it may be that the respondent was uncooperative in that regard, but that is only a guess.

[9] The respondent had no legally valid defence or opposition to the claim. The need for it to be brought at all simply wasted Mr Moore's time and money. He has been put to expense unnecessarily in taking it as far as he did to get it resolved.

[10] The case must be distinguished from one where the investigation proceeds to a meeting at which the Authority considers a valid or meritorious opposition raised to a claim but finds against the respondent nevertheless. In this case there never was a defence or opposition and the respondent has simply made the applicant incur legal expense unnecessarily.

[11] Under clause 15 of Schedule 2 of the Act New Zealand Mint Ltd is ordered to pay to Mr Stephen Moore \$900 which includes the office charges of \$60. In addition the company is to pay Mr Moore disbursements of \$70 for the filing fee on his application.

A Dumbleton
Member of the Employment Relations Authority