



# New Zealand Employment Relations Authority Decisions

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## Narayan v Wellington City Transport Limited [2011] NZERA 371; [2011] NZERA Wellington 92 (31 May 2011)

Last Updated: 22 June 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2011] NZERA Wellington 92 5325609

BETWEEN YESOK NARAYAN

Applicant

AND WELLINGTON CITY

TRANSPORT LIMITED

Respondent

Member of Authority: Representatives:

Submissions received:

P R Stapp

Kevin O'Sullivan Advocate for Applicant Blair Scotland Counsel for Respondent

23 May 2011 from Applicant 26 May 2011 from Respondent

Determination:

31 May 2011

### COSTS DETERMINATION OF THE AUTHORITY

#### Employment Relationship Problem

[1] This is an application for \$3,000 costs by the New Zealand Tramways and Public Passenger Transport Employees Union Inc for the applicant's success in bringing a personal grievance. Costs were reserved in the Authority's determination dated 8 March 2011 [2011] NZERA Wellington 37.

[2] The respondent has opposed costs on the basis that there is no evidence of actual costs being incurred.

#### Issues

[3] Is this a matter for costs and if so, how much?

#### Determination

[4] The applicant was successful in bringing a personal grievance. He was represented by his union. He was a member of the union. Costs usually follow the event, and there is nothing about this matter in which that principle would not apply. The respondent is correct that there is no evidence of the costs incurred by the union. However, Mr O'Sullivan is the union secretary and he attended and represented Mr Narayan. The union therefore has been put to the costs of Mr O'Sullivan's time and appearance in the Authority's investigation meeting. The preparation involved a written statement of evidence and submissions and replies.

[5] The general approach by the Authority in these matters has been laid out in different decisions:

- *Hammond & Anor v Bethel's Edible Oils (NZ) Ltd* unreported, J Scott, 2 May 2007, AA 6B/07
- *Kiely v Air New Zealand Ltd* unreported, L Robinson, 24 May 2007, AA 113A/07
- *Cooper v Mars New Zealand Ltd t/a Mars Petcare* unreported, D Asher, 19 Feb 2008, WA 22/08
- *Talataina v Guardian Healthcare Group Ltd* unreported, Y S Oldfield, 30 Apr 2008, AA 119A/08
- *Loder v Terson Industries Ltd t/a Doortech* unreported, D Asher, 20 May 2008, WA 55A/08
- *Ripohau v Bridgeman Concrete (Hawkes Bay) Ltd* unreported, D Asher, 9 Jun 2009, WA 79/09
- *Zhang v Scenic Circle Hotels Ltd* unreported, P Cheyne, 1 Sep 2009, CA

121A/09

- *IHC New Zealand v Scott* unreported, Perkins J, 18 Oct [2006, AC 45A/06](#)

[6] These decisions involve unions representing their members and costs. In addition the general principle relating to the ability for a union to be reimbursed costs on behalf of a party has been provided for in *O'Malley v. Vision Aluminium Ltd (No 3)* [\[1992\] 2 ERNZ 1043](#).

[7] The tariff applied by the Authority is not automatic but is a matter of discretion. I am satisfied that time and effort has gone into representing Mr Narayan. There is an absence of a quantified sum for any costs for preparation and appearances, but the expense the union has been put to can be reasonably inferred. In the absence of details this matter falls at the lower end of the scale for a one day investigation meeting.

[8] I assess costs for preparation and attendances at \$500. I accept that the union paid the filing fee and this should be reimbursed by the company. The filing fee was paid by the union under cover of a letter with the statement of problem, which was filed by Mr O'Sullivan on behalf of the applicant.

#### **Orders of the Authority**

[9] Wellington City Transport Limited is to pay Yesok Narayan \$500 contribution for reasonable costs and \$71.56 filing fee to reimburse the New Zealand Tramways and Public Passenger Transport Employees Union Inc.

P R Stapp

Member of the Employment Relations Authority