

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 294A/10
5275196

BETWEEN VINCE NEWBOLD
Applicant
AND INTERLINK LIMITED
Respondent
FOODS

Member of Authority: James Crichton
Representatives: Max Whitehead, Advocate for Applicant
Kathy Hughes, Advocate for Respondent
Submissions Received: 13 July 2010 from Respondent
15 July 2010 from Applicant
Determination: 12 August 2010

COSTS DETERMINATION OF THE AUTHORITY

The application for costs

[1] By determination dated 23 June 2010, the Authority resolved the employment relationship problem between these parties by determining that Mr Newbold had not satisfied the Authority that he had personal grievances either for dismissal or for disadvantage.

[2] Costs were reserved.

The claim for costs

[3] The representative for the respondent (Interlink) seeks full representative-party costs amounting to \$3,121.88 inclusive of GST. That amount is the sum of the three invoices rendered by Interlink's representative to Interlink for the successful defence of Mr Newbold's claim.

[4] The representative for Mr Newbold on the other hand contends that costs should lie where they fall. He advances this proposition in part because of his contention that there was an understanding between the representatives that they would jointly file an agreed statement of facts which was designed to assist the Authority to deal with the matter expeditiously. In the result that joint memorandum was not filed and it is suggested by Mr Newbold's representative that was the fault of Interlink's representative. Further, Mr Newbold's submission contends that this was a matter of statutory interpretation with widespread interest in the result and the implication is that the rules relating to *test cases* might properly apply to the fixing of costs.

The legal principles

[5] The full Court in *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808 (EC) sets out the principles which the Authority ought to apply in the cost fixing environment. Amongst those principles are the fundamental one that costs generally follow the event, that it will be an unusual case where full solicitor client costs are awarded, and that test cases sometimes justify a decision that costs should lie where they fall.

[6] Furthermore, *PBO Ltd* also gave judicial approval to the commonly adopted strategy of the Authority in fixing costs on a *daily tariff basis* provided that that tariff was applied in accordance with principle.

Determination

[7] This was a matter dealt with in the Authority in less than two hours hearing time. Although it is a decision affecting a new piece of legislation it is not in my opinion strictly speaking a test case and it follows that there is nothing in the particular circumstances of the case to depart from the usual premise that the costs should follow the event.

[8] On that basis, as Mr Newbold was unsuccessful in his claim, it is appropriate that he contribute to the costs incurred by Interlink who have been put to the trouble and expense of defending a claim which the Authority determined had no merit. However, looking at the matter in the round, this is not a case where it seems appropriate to require a contribution on a full solicitor client basis. There is nothing in the way that Mr Newbold conducted his case which would justify such an

approach. I agree with Mr Newbold's representative that the case was presented clearly and succinctly and not in an overly technical or complex way.

[9] It follows that I think that the appropriate course of action is for the Authority to fix costs based on the daily tariff approach recognising that this particular matter was dealt with by the Authority in significantly less than half a day. The daily tariff tends to run at around \$3,000 a day more or less depending on the complexity of the argument. Accordingly, in the particular circumstances of this case, a quickly heard and well presented short matter, I think a contribution by Mr Newbold to Interlink's costs is appropriately fixed at \$750.00.

James Crichton
Member of the Employment Relations Authority