

Determination

[4] Section 178(3) provides that where the Authority declines to remove a matter or part of a matter to the Court application may be made for special leave to remove.

[5] Mr Drake seeks to rely on the amendment¹ to section 183 of the Act which expressly provides that a decision of the Court sets aside and stands in the place of an Authority determination. Section 183 concerns challenges to determinations of the Authority made under section 179 of the Act. Oldco sought special leave pursuant to section 178 of the Act. I accept Ms Swarbrick's submission that there is no legal basis upon which costs could be awarded in favour of Oldco; section 183 does not apply to the present situation.

[7] *PBO v Da Cruz*² sets out the appropriate principles to be applied by the Authority in exercising its costs discretion. Applying these principles to the present matter and in particular that Mr Houston's opposition to the removal application was successful, the level of costs incurred by the parties relative to the hearing time involved, the relative complexity of the matter and given the established notional daily rate of \$3000 multiplied by the actual hearing time (no more than ½ a day), I set costs in favour of Mr Houston at \$1500 plus disbursement of \$50.

[8] **Oldco PTI Limited is ordered to pay Philip Houston \$1500 plus GST plus disbursements of \$50, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.**

Marija Urlich

Member of the Employment Relations Authority

¹ Section 61 Employment Relations Amendment Act (No 2) 2004

² [2005] 1 ERNZ 808