

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 6/08
5085019

BETWEEN REYNALDO PANTOJA
 Applicant

AND GN NETWORKS LTD
 Respondent

Member of Authority: James Wilson

Representatives: Reynaldo Pantoja in person
 David Mathieson for the respondent

Submissions received: 9 October 2007 from G N Networks Ltd
 19 October 2007 from Mr Pantoja

Determination: 14 January 2008

COSTS DETERMINATION OF THE AUTHORITY

Background

[1] In a determination dated 11 September 2007, (determination AA 281/07) I found that Mr Pantoja was not an employee of GN Networks Ltd and that the Authority therefore had no jurisdiction to deal with any claim he may have against that company. In that determination I reserved the question of costs. Unfortunately the parties were unable to settle the matter between themselves and GN Networks subsequently filed a submission seeking a total contribution from Mr Pantoja of \$4850.00 in respect to its legal costs. Mr Pantoja has filed a submission in opposition.

The respective submissions

[2] On behalf of GN Networks Mr Mathieson says that his client's total legal costs amounted to \$4850.00, inclusive of preparing and drafting statements in reply and witness statements and travelling to Hamilton to attend the Authorities investigation meeting. He argues that Mr Pantoja's claim was frivolous and without merit and that

Mr Pantoja drew out the proceedings unnecessarily. In support of his submission Mr Mathieson cites the employment Court judgement's in *NZ Airline Pilots Association v Registrar of Unions* [1989] 2 NZILR 550 and *Reid v NZ Fire Service Commission* [1995] 2 ERNZ, 38.

[3] In his submission Mr Pantoja argues that his claim was not frivolous or without merit and that he did not draw out the proceedings unnecessarily. He says that he *attempted in a very honest and open manner to get GN Networks to pay me for the work that they acknowledged I had performed*. He suggests that the primary principle in awarding reasonable costs should be that the Authority would not have had to have been involved had GN. Networks been fair and honest when dealing with him in the first instance.

Legal considerations

[4] The principles to be followed by the Authority when considering whether it should use its discretion to award costs are now well settled. These were summarised by the Employment Court in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*, [2005] 1 ERNZ 808):

- *There is a discretion as to whether costs should be awarded and what amount;*
- *The discretion is to be exercised in accordance with principle;*
- *The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority;*
- *Equity and good conscience is to be considered on a case by case basis;*
- *Costs are not to be used as a punishment or as an expression of disapproval of an unsuccessful party's conduct although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award;*
- *It is open to the Authority to consider whether all or any of the parties costs were unnecessary or unreasonable;*
- *That costs generally follow the event;*
- *That without prejudice offers can be taken into account;*
- *That awards will be modest;*
- *That frequently costs are judged against a notional daily rate;*

- *The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.*

Discussion and determination

[5] In my substantive determination I made the following comment:

[11] I have a good deal of sympathy for Mr Pantoja. It is clear that Mr Ranchhod did invite him to assist with the due diligence process and this was clearly on the basis that Mr Pantoja would, when the new company was established, be employed in a senior management role. In good faith Mr Pantoja undertook that work only to find that GN Networks had pulled out of the joint-venture and no new position eventuated. Mr Pantoja has never been paid for the work he undertook.

However, irrespective of my sympathy for Mr Pantoja, he "lost" his case in the Authority. In accordance with the principles as set out above it is appropriate that costs, if awarded, should *follow the event*. On that basis GN Networks is entitled to some contribution towards its costs. I do not however accept Mr Mathieson's argument that his client should be able to recover all of their costs. The Authority's investigation meeting took less than half a day. Although it was of course their right to choose whatever representation they wished, it was the company's decision to brief a representative from Auckland. Although Mr Pantoja, as a self represented litigant may not have been entirely efficient in his argument, I have no doubt that he genuinely believed that he had been an employee of GN Networks and that he was entitled to bring his claim to the Authority. Taking into account all of the circumstances surrounding this matter I find that an appropriate contribution by Mr Pantoja to GN Networks legal costs is \$500.00

[7] Mr Pantoja is ordered to pay GN Networks Ltd, \$500 as a contribution to their legal costs.

James Wilson

Member of the Employment Relations Authority