Determination Number: AA 137A/05
File Number: AEA 836/04

Under the Employment Relations Act 2000

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE

BETWEEN	Lee James Raynel (Applicant)
AND	A C Blackmore Limited (First Respondent) **AND** Fleet Management Personnel Services Limited (Second Respondent)
REPRESENTATIVES	Mark Nutsford, Advocate for Applicant A J H Witten-Hannah, Counsel for Respondents
MEMBER OF AUTHORITY	Y S Oldfield
SUBMISSIONS RECEIVED	11 May 2005
DATE OF DETERMINATION	13 May 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

In a determination dated 18 April I struck out the first respondent and determined that the applicant did not have a personal grievance against the second respondent. I noted that the issue of costs was reserved. The respondent has now made application for costs and both parties have made a brief written submission on the subject. I proceed to determine the issue on the basis of those submissions.

On behalf of the respondents Mr Witten-Hannah seeks a contribution of $3,000.00 to actual costs of $4,500.00. Mr Nutsford, for the applicant, says that costs should lie were they fall. In support of this he asserts first that the applicant faced difficulties in establishing the identity of his employer and second that the respondents delayed attending mediation. He argues also that if Counsel for the respondents had been more cooperative and more forthcoming with information the case might not have progressed to a full investigation. Finally he asserts that Mr Raynel will face difficulties in meeting any award of costs since he has been unemployed until recently and is the father of a new baby.

Determination

In addition to the matters raised in submissions on this issue I have taken into consideration the following points:

- It is not within the Authority's jurisdiction to make an award of costs in relation to mediation, and Mr Witten Hannah's application does not provide information regarding the proportion of costs incurred in mediation;

- Separate costs have not been incurred as a result of the first respondent's involvement; the respondents have common owners and directors and no additional witnesses were required for the matter to be defended by the first respondent;
- Although there were delays in getting a statement of reply from Mr Raynel's employer and in getting the parties off to mediation, the applicant was eventually put on notice of what his employer would say in defence of the claim, and that was well before the matter proceeded to an investigation meeting.

I conclude that there should be a contribution to costs in this case. The appropriate level of contribution can be set by means of a routine assessment of what reasonable costs might be.

Once this case had finally been to mediation the case had no particular distinguishing features which might set it apart from other similar and very simple cases. At that level of complexity, I consider a multiplier of 1.5 applied to the hearing time, to be a suitable guide to the amount of professional input required. The investigation meeting was two and a half hours, giving a total time of 3.75 hours. Mr Witten-Hannah did not advise his hourly rate so I take as a guide a rate ($270.00 per hour) recently quoted to me in costs submissions from an experienced practitioner.

Applying the hourly rate of $270.00 gives total reasonable costs of:

1.5 x 2.5 x $270.00 = **$1,012.50.**

It is well established that the starting point for an award of costs to a successful party should be at least 30% of the reasonable costs. Being mindful that the actual costs (excluding mediation) were probably higher than what I have calculated to be reasonable costs, I order a contribution in the vicinity of 50%.

Therefore, Mr Raynel is ordered to pay to the second respondent the sum of $500.00 as a contribution to his costs.

Y S Oldfield
Member of Employment Relations Authority