

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

**THE PARTIES** Snorkel Elevating Work Platforms Limited (Snorkel)  
**AND** Harold Stewart Thompson  
**REPRESENTATIVES** Lewis Turner for Snorkel  
Michael Gould for Mr Thompson  
**MEMBER OF AUTHORITY** P R Stapp  
**SUBMISSIONS** 28 June 2006, 13 July 2006 and 24, 1, 7 August 2006  
**DATE OF DETERMINATION** 3 November 2006

**COSTS DETERMINATION OF THE AUTHORITY**

**Costs and Interest Claims**

[1] This is a cross application for costs from both parties involved in the employment relationship problem that was reported in a determination of the Employment Relations Authority on 10 May 2006 (WA 73/06 P R Stapp) and where costs were reserved. The parties' applications to the Authority were consolidated into one proceeding and heard together.

[2] In addition, Snorkel and Mr Thompson have raised an issue about an interest payment on the sum the Authority ordered Mr Thompson to pay to Snorkel.

[3] Snorkel has applied for a contribution of \$15,000 towards its costs in regard to its application for Mr Thompson to repay money and pay interest on the sum. It has requested the Authority to let costs lie where they fall on Mr Thompson's application for a personal grievance.

[4] Snorkel says its actual and reasonable costs were \$35,000 on its claim, and says that the costs were reasonably incurred to get its money back from Mr Thompson.

[5] Snorkel has claimed a total of \$22,469 for filing fee, video conferencing, witness expenses, travel and accommodation for Counsel and forensic analysis of a computer and courier charges, photocopying and taxis.

[6] Mr Thompson's costs were \$15,147.50 on Snorkel's application and \$18,078 on his personal grievance application.

### **The Interest Payment Claim**

[7] Snorkel's claim for interest on the sum it was awarded to be repaid by Mr Thompson was claimed in Snorkel's statement of problem. It was disposed of at the time of the Authority's determination without any order being made for a payment of interest. The Authority's determination was for Mr Thompson to pay a total sum given the dispute that genuinely existed between the parties without any finding of deliberateness on his part. That is the close of the matter.

### **Costs**

[8] It is accepted that costs follow the event. This is an unusual situation in that both parties are claiming costs on their respective applications that were consolidated and heard together. Hearing both applications together was the most practicable way to deal with the matter given the overlapping facts and the dual involvement of witnesses in the employment relationship problem. The matter was important to both parties and despite them attending mediation to try and save costs the issues were significant enough for both parties to end up in an investigation of the employment relationship problem.

[9] I am satisfied that both applications were genuine and not just a matter of leverage against each other. Therefore an apportionment of costs should be made on both applications. Both parties' applications were in part successful. However, I have considered that the separate applications were consolidated because of the overlapping factual matters, credibility issues and that there were common witnesses that needed to be interviewed.

[10] Snorkel has been put to considerable cost to recover its money. That money was a significant sum.

[11] Both parties have incurred the filing fee of \$70 each. That expense should be carried by each party.

[12] Both parties benefited from the videoing conference that was aimed at saving costs. This cost was \$1,314.26. Mr Thompson can pay a half share of this expense. I order him to pay Snorkel Elevating Work Platforms Limited \$657.13.

[13] I have decided not to order any other disbursements because both parties were required to prepare for the investigation that would inevitably involve expense of photocopying, couriers etc. Both parties chose their Counsel, and expenses for travel are an inevitable part of any such proceedings given the employment relationship and the responsibility that the Company has to take in fulfilling its obligations that involve attendance in New Zealand. Mr Thompson should not have to pay for those choices incurred by the Company. The attendance of witnesses is a standard requirement and usually the costs have to be incurred by the parties. I have no reason to depart from this approach. Given that Snorkel was an applicant it should meet its own witness costs, I hold.

[14] I have used the \$15,000 as a reasonable sum to assess costs for Snorkel as put forward. Mr Thompson should contribute 40%, which amounts to \$6,000. My assessment is based on the preparation, representation and the length of time involved in the Authority's investigation meeting including telephone conference and preparation of affidavits and submissions and because of the proportionality of Snorkel's claim. I order him to pay Snorkel Elevating Work Platforms Limited \$6,000.

[15] Snorkel Elevating Work Platforms Limited is required to pay Mr Thompson \$3,000 towards his costs that relate to a straight forward personal grievance, preparation and representation that is within the standard range for employment relationship problems of this sort. There will be no award for any other disbursements.

### **Summary**

[16] Mr Thompson is to pay Snorkel Elevating Work Platforms Limited \$657.13 for the videoing conference.

[17] Mr Thompson is pay Snorkel Elevating Work Platforms Limited \$6,000 contribution to its costs on its application for recovery.

[18] Snorkel Elevating Work Platforms Limited is to pay Mr Thompson \$3,000 towards his costs on the personal grievance.

P R Stapp  
Member of the Authority