

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Simon Thompson (Applicant)
AND Gaze Commercial Ltd (Respondent)
REPRESENTATIVES Lawrence Ponniah, Counsel for Applicant
Richard Harrison, Counsel for Respondent
MEMBER OF AUTHORITY Leon Robinson
DATE OF DETERMINATION 17 May 2006

DETERMINATION OF THE AUTHORITY ON COSTS

[1] By a Determination dated 12 October 2005¹, I determined that Mr Simon Thompson (“Mr Thompson”) had a personal grievance. I made various formal orders to resolve the problem.

[2] The parties were invited to resolve costs between them but they were unable to agree. The representatives have made submissions to assist me in the exercise of the Authority’s discretion.

[3] Mr Ponniah advises Mr Thompson’s costs of professional representation at \$33,004.00 exclusive of GST together with disbursements of \$911.00. Mr Thompson also seeks reimbursement for his accountant witness’ costs of \$10,290.00. Mr Ponniah submits that Gaze Commercial Limited (“Gaze”) should be ordered to contribute two-thirds of Mr Thompson’s costs together with the accountant’s fee and disbursements.

[4] Mr Harrison submits that Mr Thompson was essentially unsuccessful. He says the Authority’s investigation concentrated largely on Mr Thompson’s claim in relation to a share option and in which he ultimately did not succeed. Mr Harrison submits that costs ought to lie where they fall.

[5] The principles and rules conventionally applied to applications for costs in traditional adversarial or trial litigation do not fit with the Investigative role of the Authority and the objects of the legislation which establishes it. Those principles and rules continue to remain relevant however and the overall question is to determine what is a reasonable contribution to reasonable costs incurred. The Authority adopts a principled approach taking into account relevant matters and taking no account of irrelevant ones. Generally, awards of costs in the Authority are modest consistent with the Authority’s approach to investigations. That approach is as described in *Wilson and Grey Power Publishing Co Ltd*².

¹ AA323/05

² unreported, AA58/03, 4 March 2003, Alastair Dumbleton.

[6] This investigation meeting proceeded over one day. Mr Thompson succeeded in his claim for unjustifiable dismissal. However, the claim for bonus entitlement of a significant quantum was in my view entirely premature because the parties had not complied with their own agreement. Mr Thompson was unsuccessful in his claim for exercise of share option and his claim for penalties. Gaze resists Mr Thompson's claim for costs and says that he was largely unsuccessful. That is a view I share.

[7] Mr Thompson's costs are in my view excessive. Parties cannot expect to recover costs of such magnitude in this inquisitorial forum. Representatives have a responsibility to ensure their clients are appraised of the Authority's approach to costs and the underlying policy objectives for that approach.

[8] There is nothing unusual in this case or any particular factor that warrants any departure from the Authority's conventional approach to costs. In so far as I regard Mr Thompson's various claims as severable and distinct, I award him \$3,000.00 as a contribution to the costs incurred in successfully pursuing his claim for unjustifiable dismissal.

[9] I make no order in relation to the accountant's costs. His contribution was helpful but I do not regard his retention as something which Gaze should now indemnify or contribute to since that part of Mr Thompson's claim did not succeed. As well, it is for the Authority to determine the both the nature and extent of the enquiries it makes.

[10] Exercising my discretion on a principled basis, **I order Gaze Commercial Limited to pay to Simon Thompson the sum of \$3,000.00 as a contribution to costs.**

Leon Robinson
Member of Employment Relations Authority