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Thomson v Winger Motors Limited (Auckland) [2007] NZERA 9 (13 March 2007)

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 7A/07 5052073

BETWEEN Andrew Thompson

Applicant

AND Winger Motors Ltd

Respondent

Member of Authority: James Wilson

Representatives: Lorne Campbell for the applicant

Agnes McKay for the respondent

Investigation Meeting: 14 November 2006

Determination: 13 March 2007

COSTS DETERMINATION OF THE AUTHORITY

Background

[1] In a determination dated 15 January 2007 (Determination AA 7/07) I found that Mr Thompson had been justifiably dismissed by his employer Winger Motors Ltd. In that determination I reserved the question of costs and suggested that the parties attempt to resolve that issue between themselves. Unfortunately they have been unable to do so and Ms McKay, on behalf of Winger Motors, has now filed an application seeking a contribution towards her client's costs.

[2] Ms Mackay says that her client's legal costs relating to the Authority's investigation amounted to \$8,000 plus GST and seeks a contribution to those costs of *at least 50%*. In support of her argument she quotes the principles set by the Employment Court in *PBO Ltd v Da Cruz*, AC2A/05, 9 December 2005. She says that Mr Thomson's claims were without merit and the Authority's Determination was 100% in favour of Winger Motors.

[3] In response Mr Campbell, for Mr Thomson, says that under the circumstances, Winger Motors costs were excessive. He says that Ms McKay was fully acquainted with the substance of the case prior to the Authority's investigation because she had represented Winger Motors during the dismissal process. He points out that Ms McKay did not appear to have drafted any witness statements, the investigating meeting was less than a day and closing submissions were brief. In addition Mr Campbell says that Mr Thomson is currently in receipt of an unemployment benefit and that he has very few assets. Mr Campbell submits that in equity and good conscience the Authority should make no order for costs.

Discussion

[4] As both representatives agree, this case was relatively straight forward. There was little dispute regarding the basic facts and Winger Motors principal witness filed only a relatively brief email statement. The meeting lasted less than a day and the representatives conducted themselves efficiently and without attempting to pursue irrelevant or pedantic points.

[5] I do not accept Mr Campbell's submission that this is a case where costs should be allowed to lie where they fall. While Mr Thomson's lack of financial resources is a matter to be taken into account in deciding the level of costs to be awarded, he was aware, or should have been aware that if he lost his case he may be required to make some contribution towards Winger Motors costs.

Determination

[6] Taking into account the nature of the case, the conduct of the investigation and Mr Thompson's financial circumstances, Mr Thompson is to pay Winger Motors \$1000.00, including GST, as contribution towards their costs.

James Wilson

Member of the Employment Relations Authority

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