

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Matthew Lance Tones (Applicant)
AND 3D1 Ltd (Respondent)
REPRESENTATIVES Matthew Young for Applicant
Ian Matheson for Respondent
MEMBER OF AUTHORITY Y S Oldfield
SUBMISSIONS 15 December, 21 December
DATE OF DETERMINATION 7 February 2007

DETERMINATION OF THE AUTHORITY AS TO COSTS

1. In a determination dated 23 November 2006 I concluded that Mr Tones was not an employee and that I did not have jurisdiction to determine the problems which had arisen between him and the respondent.
2. The successful respondent now seeks a contribution of 80% to its costs, plus all travel related disbursements. It says that the claim that the applicant was an employee had no merit and that delayed disclosure of information significantly increased the time involved in preparation. Mr Matheson has provided me with details of all legal costs and disbursements including those for mediation. It would appear that total legal costs for the respondent excluding mediation were \$8,190.00 while disbursements associated with the Authority investigation (travel costs) were \$544.40.
3. Counsel for the applicant has countered this by saying that the meeting took less than a day and the applicant was cooperative in managing the investigation so as to minimise costs. He says that the applicant genuinely believed that he was an employee and notes that the determination in question has been challenged. He says that there are no unusual circumstances to justify a departure from the normal approach of the Authority: to award a modest contribution to costs.

Determination

4. This was a preliminary matter and the issue for determination (the nature of the contract between the parties) was narrow. The meeting took less than a day. For these circumstances the level of costs incurred is at the higher end of the usual range. The respondent is entitled to a contribution to its costs but not at the level sought.
5. The applicant is ordered to make a contribution of \$2,000.00 to the respondent's costs, and to pay disbursements of \$544.40.

Y S Oldfield
Member of Employment Relations Authority

