

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 115/07
5034417

BETWEEN MARCEL VAN LEEUWEN
 Applicant

AND CANTERBURY DISTRICT
 HEALTH BOARD
 Respondent

Member of Authority: James Crichton

Representatives: David Beck Counsel for Applicant
 Penny Shaw, Counsel for Respondent

Submissions received: 22 December 2006 from Applicant
 No submissions from respondent

Determination: 19 September 2007

COSTS DETERMINATION OF THE AUTHORITY

The application for costs

[1] By determination dated 22 November 2006, the Authority determined that Mr Van Leeuwen had not made out his claim of personal grievance and so his application failed in its entirety.

[2] Costs were reserved.

The parties submissions

[3] Only Mr Van Leeuwen, the entirely unsuccessful applicant, has filed submissions. Those submissions disclose that he is legally aided and impecunious. Mr Van Leeuwen proposes that costs should lie where they fall.

[4] The Canterbury District Health Board, despite a reminder from the Authority's staff failed to furnish any submissions. That speaks volumes of their conviction that

any application they might make would, given the parlous state of Mr Van Leeuwen's coffers, no doubt fall on stony ground.

Discussion

[5] The reality of Mr Van Leeuwen's financial position and the absence of any submissions from the Canterbury District Health Board encourage me that Mr Van Leeuwen's submission is a realistic one in all the circumstances.

[6] Clearly, Mr Van Leeuwen is in no position to make any contribution to the Canterbury District Health Board's costs. The Canterbury District Health Board for its part, has chosen not to be heard on the matter of costs so it is unclear to the Authority what level of costs were incurred by them in its successful defence of Mr Van Leeuwen's claim. However, even if the costs were themselves only modest, the principle that costs follow the event would in the normal course entitle the Canterbury District Health Board to look to Mr Van Leeuwen for a contribution.

[7] In all the circumstances, I am not persuaded that an award against Mr Van Leeuwen in favour of the Canterbury District Health Board serves any useful purpose and I fancy that the Canterbury District Health Board's failure to be heard on the matter of costs is tacit acceptance by the Board that the matter is not worth pursuing.

Determination

[8] In the particular circumstances of this case, I direct that costs are to lie where they fall.

James Crichton
Member of the Employment Relations Authority