

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Stephen Ross Wackrow (Applicant)
AND Fonterra Co-operative Group Limited (Respondent)

MEMORANDA RECEIVED 5 January 2005 from Applicant
28 January 2005 from Respondent

MEMBER OF AUTHORITY Dzintra King

INVESTIGATION MEETING 16 April 2004

DATE OF DETERMINATION 11 March 2005

COSTS DETERMINATION OF THE AUTHORITY

Mr Wackrow sought three orders, one of which I granted. He now seeks costs. The respondent also seeks costs on the basis that it successfully defended the imposition of two of the orders sought. In the alternative, the respondent asks that costs lie where they fell.

Costs follow the event and are awarded to the successful party to compensate him or her having been put to the expense of pursuing his or case: Victoria University of Wellington v Alton Lee [2001] 1 ERNZ 305. The successful party is entitled to a reasonable contribution to costs actually and reasonably incurred. The applicant asks that costs be awarded on the basis of Binnie v Pacific Health Limited [2002] 1 ERNZ 438. I am not prepared to award costs on the basis of Binnie. I base that upon Harwood v Next Homes Limited, unreported, EC, Auckland, AC 70/03

I accept the applicant's submissions that he should not be deprived of a contribution to his costs because he did not succeed on all counts.

The respondent claims that the applicant's costs were not reasonably incurred. The issues were of great importance to the applicant and he was entitled to have the issues legally determined. The actual costs incurred were \$12,080 for senior counsel and \$7,800 for junior counsel. Senior counsel's charge out rate is \$400 per hour and the junior's is \$200 per hour. Disbursements are also claimed, being \$1,850, the fee charged by Mr Davison for preparation of an affidavit; and \$365.14 comprising the filing fee, stationery, tolls and couriers.

The matter was of great importance to the applicant and he was justified in instructing senior counsel. Allowing two days for preparation plus the hearing time of eight hours gives a total of twenty four hours. Twenty four multiplied by 400 comes to \$9,600. These are the reasonably incurred costs to which Mr Wackrow is entitled to be paid a reasonable contribution.

In setting the contribution I have borne in mind Mr Wackrow's financial circumstances and the fact that his employment has now been terminated. The respondent is to pay to the applicant the sum of \$4000.

As to disbursements, Mr Wackrow is entitled to be paid the \$365.14 referred to above. I am aware that the Employment Court ordered that payment of disbursements should include Mr Davison's affidavit evidence. That was on the basis that the Court relied upon that evidence. My finding did not and I therefore decline to order that the affidavit evidence be paid for by the respondent.

Dzintra King
Member of Employment Relations Authority