



New Zealand Employment Relations Authority Decisions

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Whangarei District Council v Jenkins AA370A/10 (Auckland) [2010] NZERA 776 (28 October 2010)

Last Updated: 18 November 2010

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 370A/10 5285092

BETWEEN WHANGAREI DISTRICT

COUNCIL Applicant

AND JOHN DAVID JENKINS

Respondent

Member of Authority: Yvonne Oldfield

Representatives: Submissions received:

Andrew Golightly for Applicant Respondent in person

13 September from Applicant 22 September from Respondent

Determination: 28 October 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] The applicant in this case, Whangarei District Council (the Council) was largely successful in a claim for recovery of relocation expenses which the respondent, Mr Jenkins forfeited when he left his employment relatively soon after being recruited from the UK. In a determination dated 19 August 2010 I ordered Mr Jenkins to reimburse to the Council the sum of \$10,733.64 and reserved the question of costs.

[2] The parties have addressed the question of costs in the course of discussions about how the Authority's orders are to be met. They have been unable to agree and the applicant now seeks an order for a contribution to its costs.

[3] Mr Golightly says that before lodging the matter with the Authority the applicant made repeated demands for repayment of the relocation expenses, thus giving Mr Jenkins an opportunity to resolve the matter at the outset and avoid escalating costs. Since the Authority determination was issued further demands for payment have also been made.

[4] Mr Golightly submitted that since the applicant has been successful the respondent should make a contribution to the applicant's costs which were stated to be \$4,690.00.

[5] In written submissions from his home in Northern Ireland Mr Jenkins confirmed that he had been in email contact with Mr Golightly to try and resolve the matter and advised that he was willing to pay the award of \$10,733.64 in instalments. However he also said "*I am sorry but I will not be paying any extra legal costs.*" He explained that the instalment plan he had offered (approximately \$330.00 NZ per month) was the absolute maximum he was able to pay based on his current income which had been reduced due to recent government cuts.

[6] Costs normally follow the event and in this case, the Council was successful in obtaining judgement for the amount it had originally sought from Mr Jenkins when his employment ended. In setting costs awards the Authority is however required to give consideration to the unsuccessful party's ability to pay. I am also mindful that this was a very straightforward matter and that the investigation meeting took less than an hour.

[7] Balancing all considerations I am satisfied that the Council should recover part of its costs. **The respondent, Mr Jenkins, is ordered to pay to the Council the sum of \$1,000.00 as contribution to its costs.**

Yvonne Oldfield

Member of the Employment Relations Authority

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