

**IN THE EMPLOYMENT COURT
CHRISTCHURCH**

**[2015] NZEmpC 227
EMPC 134/2015**

IN THE MATTER OF a challenge to a determination of the
 Employment Relations Authority

AND IN THE MATTER of an application for costs

BETWEEN LEAN MEATS OAMARU LIMITED
 Plaintiff

AND NEW ZEALAND MEAT WORKERS
 AND RELATED TRADES UNION
 INCORPORATED
 Defendant

Hearing: (on the papers dated 23 October, 14 and 15 December 2015)

Appearances: J L Bates, counsel for the plaintiff
 P Churchman QC, counsel for the defendant

Judgment: 18 December 2015

COSTS JUDGMENT OF JUDGE B A CORKILL

[1] This judgment resolves issues as to costs arising from an interlocutory judgment dated 31 August 2015,¹ and from the Court's substantive judgment of 6 October 2015.²

[2] In the first of those judgments, I dismissed the plaintiff's application that certain evidence of a witness to be called by the defendant at the substantive hearing be declared inadmissible.³ In the substantive judgment, I considered a challenge

¹ *Lean Meats Oamaru Ltd v New Zealand Meat Workers & Related Trades Union Inc* [2015] NZEmpC 148.

² *Lean Meats Oamaru Ltd v New Zealand Meat Workers and Related Trades Union Inc* [2015] NZEmpC 176.

³ *Lean Meats Oamaru Ltd v New Zealand Meat Workers & Related Trades Union Inc*, above note 1 at [25]- [26].

brought by the plaintiff;⁴ there was an issue as to whether there had been compliance with the rest-break provisions contained in Part 6D of the Employment Relations Act 2000 which took effect on 1 April 2009; and whether there was a consequential claim for overtime. I resolved the challenge in favour of the defendant and held that it was entitled to costs. I invited the parties to resolve cost issues directly if possible; they have been unable to do so.

[3] Accordingly, counsel for the defendant, Mr Churchman QC, filed a memorandum as to costs. In the information supporting the defendant's application in respect of both judgments, relevant invoices were produced totalling \$9,782.41 inclusive of GST, and travel-related disbursements of \$316.88. An order for costs of two-thirds of this sum is sought.

[4] On 2 November 2015, an application for leave to appeal the Court's judgment was filed in the Court of Appeal by the plaintiff. It has yet to be heard. I am advised that it includes an application for a stay of costs in the Employment Court.

[5] Counsel for the plaintiff, Mr Bates, has filed a memorandum in which he does not contest the defendant's entitlement as to costs. Mr Bates submits that the appropriate level of costs is "according to the two-thirds rule". He accepts that it is appropriate for the Court to determine the issue of costs in the absence of an order of stay having been made.

[6] It is well established from Court of Appeal decisions that 66 per cent of reasonably incurred costs is generally regarded as an appropriate starting point, although the Court has a discretion to consider whether there are factors justifying an increase or a decrease given the discretionary nature of the assessment.⁵

[7] No submissions have been advanced suggesting that the amounts sought are unreasonable.

⁴ *New Zealand Meat Workers & Related Trades Union Inc v Lean Meats Oamaru Ltd* [2015] NZERA Christchurch 57.

⁵ *Victoria University of Wellington v Alton-Lee* [2001] ERNZ 305 (CA) at [61]-[63]; *Binnie v Pacific Health Ltd* [2002] 1 ERNZ 438 (CA) at [14]; *Health Waikato Ltd v Elmsly* [2004] 1 ERNZ 172; 2004 17 PRNZ 16 (CA) at [42]; *Belsham v Ports of Auckland Ltd* [2014] NZCA 2006 at [22].

[8] The only comment which I need to make relates to GST. In my view costs between parties should be awarded on a GST neutral basis.⁶ This is because an unsuccessful party making contribution to costs is not paying for a service provided to it by the successful party; and such an approach is consistent with the position adopted in the High Court.⁷

[9] Subject to that observation, I consider the amounts sought for the defendant to be fair and reasonable in the circumstances.

[10] Accordingly, I order the plaintiff to pay the defendant the sum of \$6,408.88, made up as follows:

- a) a contribution to the defendant's costs in respect of the interlocutory application and in respect of the substantive hearing in the sum of \$5,592 (exclusive of GST which is not payable);
- b) disbursements of \$316.88; and
- c) a contribution to the costs of the application made by the defendant for costs in the sum of \$500.

B A Corkill
Judge

Judgment signed at 3.00 pm on 18 December 2015

⁶ *Wills v Goodman Fielder New Zealand Ltd* [2015] NZEmpC 30 at [23]-[24].

⁷ *Burrows v Rental Space Ltd* (2001) 15 PRNZ 298 (HC) at [14].