



Employment Court of New Zealand

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Ah Ching v Westpac New Zealand Limited [2010] NZEmpC 134 (14 October 2010)

Last Updated: 26 October 2010

IN THE EMPLOYMENT COURT AUCKLAND

[\[2010\] NZEMPC 134](#)

ARC 113/09

IN THE MATTER OF a challenge to a determination of the

Employment Relations Authority

AND IN THE MATTER OF an application for costs

BETWEEN TAINOINO AH CHING AND 40

OTHERS Plaintiffs

AND WESTPAC NEW ZEALAND LIMITED

Defendant

Hearing: By memoranda of submissions filed on 22 July and 4 August 2010

Judgment: 14 October 2010

COSTS JUDGMENT OF JUDGE M E PERKINS

[1] The substantive proceedings in this matter involved a dispute between the parties ostensibly related to the interpretation of a collective agreement. In reality, the dispute was to be resolved by an analysis of the factual background. Following a finding in favour of the plaintiffs, I allowed time for the filing of memoranda on the issue of costs. Such memoranda have now been filed.

[2] The plaintiffs seek costs against the defendant in respect of the proceedings both before the Employment Relations Authority and this Court. So far as the Authority proceedings are concerned, against actual costs incurred by the plaintiffs of \$5,460, the plaintiffs seek an award of \$3,000 (plus GST). In respect of the

proceedings before this Court, against total costs incurred of \$7,875, the plaintiffs

seek an award of \$5,000 (plus GST). In addition, the plaintiffs seek reimbursement of filing fees of \$270.

[3] The defendant opposes the costs sought and primarily submits that costs should lie where they fall in view of the fact that this matter was a test case involving the interpretation of a clause in the collective agreement. If costs are to be awarded against the defendant, it submits that such awards should be modest.

[4] I do not agree with the submissions put forward on behalf of the defendant. As I have indicated, this matter in reality involved analysis of factual matters rather than interpretation. The outcome, on the basis of the evidence which was available, was inevitable. In the circumstances costs should follow the event.

[5] The costs now sought by the plaintiffs are on the basis of generous discounting against the actual costs incurred and take account of the usual principles applied by this Court as to the quantum of costs awards.

[6] In the circumstances the defendant is ordered to pay to the plaintiffs the sum of \$3,000 plus GST in respect of the

proceedings before the Authority. It is also ordered to pay \$5,000 plus GST as costs for the proceedings in this Court. In addition there is an order that the defendant reimburse the plaintiffs for the filing fees amounting to \$270.

M E Perkins
Judge

Judgment signed at 9 am on Thursday 14 October 2010

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