



Employment Court of New Zealand

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Air New Zealand Limited v V AC15A/09 [2009] NZEmpC 62 (21 July 2009)

Last Updated: 24 July 2009

IN THE EMPLOYMENT COURT

AUCKLANDAC 15A/09ARC 35/08

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

AND IN THE MATTER OF an application for costs

BETWEEN AIR NEW ZEALAND LIMITED

Plaintiff

AND V

Defendant

Hearing: By submissions filed on 2 and 17 July 2009

Court: Chief Judge G L Colgan Judge B S Travis Judge A A Couch

Judgment: 21 July 2009

SUPPLEMENTARY COSTS JUDGMENT OF THE FULL COURT

[1] The plaintiff seeks costs in this Court and in the Employment Relations Authority where they were reserved but have not been determined. Acknowledging that the defendant was successful in part before us, the plaintiff seeks a contribution to its costs only in respect of that part of the case in which it succeeded in Court.

[2] Although the Authority found in favour of the defendant on the merits, our judgment reversed that outcome. The plaintiff says, therefore, that it should have a reasonable contribution to its costs at first instance in these circumstances.

[3] The plaintiff's claims are for \$8,200 towards costs in this Court, disbursements of \$689.99 in this Court, and a contribution towards legal costs in the Authority of \$5,000.

[4] Awards of costs are broadly discretionary under clause 19 of Schedule 3 to the [Employment Relations Act 2000](#) ("the Act") although that discretion must be exercised in a principled way. Costs will generally, but not invariably, follow the event. Here, although the plaintiff was successful in having its dismissal of the defendant declared justifiable, the real thrust of its appeal was to challenge the Court's interpretation and application of [s103A](#) of the Act. In this, it was unsuccessful.

[5] In one very real sense, this was a true test case the outcome of which assists all persons involved in employment law to know with certainty how the Authority and the Court interpret and apply the legislation. Indeed, it is probably no exaggeration to say that the majority of employment disputes, at least those that result in litigation, involve a determination of the justification of employers' actions. This Court has frequently decided that it is not appropriate to award costs in test cases and this is no exception in our view.

[6] In the particular circumstances of the case we agree with the position taken by the defendant that the parties should meet their own costs of representation as reflecting fairly the outcome of all elements of the case. That should, in our view, extend also to costs in the Authority. We therefore decline to make any award of costs.

GL Colgan

Chief Judge

For the full Court

Judgment signed at 12.30 pm on Tuesday 21 July 2009

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