

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2011] NZERA Wellington 78

File Number: 5297755

BETWEEN Norman Brooker and 21 Others
Applicants

AND Care Park New Zealand Limited
Respondent

Member of Authority: Denis Asher

Representatives: Peter Cranney for the Applicants
Karen Soich for the Company

Submissions received: 12 May 2011

Determination: 13 May 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 21 December 2011 (WA 204/10) I found against the applicants' claims that the Company was liable for payment to them of redundancy compensation. I also found that grievances raised by the applicants were outside of the statutory 90-day period.

[2] Costs were reserved as requested.

The Company's Costs Submissions Summarised

[3] In submissions received on 23 March and 12 May 2011 the Company seeks a contribution to its costs in the sum of \$12,000. The respondent's total costs are \$17,814.75 (inclusive of GST and disbursements). Invoices were attached.

[4] The legal issues were complex and a number of witnesses were interviewed at length and statements taken.

[5] Final submissions by the applicants revisited all of the respondent's submissions thus necessitating the respondent to reply in kind, thereby increasing the time spent on this matter.

[6] This case is distinguishable from the lower scale of costs normally awarded in the resolution of employment relationship problems in that it involved an applicant more conversant with the law and its members' entitlements yet still sought remedies it was not legally entitled to.

[7] The potential financial impact on the Company in the event the applicants were successful necessitated the most thorough defence, requiring both Australian and New Zealand counsel to be engaged, hence a contribution of \$12,000 is reasonable and justified.

The Applicants' Costs Submissions Summarised

[8] In submissions received on 4 May the applicants say this matter was a dispute as the term is used in s. 5 of the Employment Relations Act 2000. This was a straightforward interpretation of a dispute and the claim it involved complex legal issues is simply incorrect. The investigation involved around an hour of hearing time including submissions. The respondent filed a single brief of evidence and there were virtually no disputed facts. In these circumstances there is no justification for the costs claimed.

[9] The Company must take some of the blame for the dispute as the evidence established it informed all of the applicants that they would be paid redundancy and the bill would be met by the (relevant) airport company.

[10] If costs are recoverable they should be around \$1,000 to \$1,500 suitably reduced.

Discussion and Findings

[11] The Authority's discretion with which to award costs is now well settled and typically follows the event: *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.

[12] The investigation into this problem took less than half a day. At its heart was a simple issue.

[13] The respondent has not failed to establish why employment of Australian, and of Auckland-based, counsel was required, resulting as it appears to have done in additional and unnecessary costs to the Company.

[14] There is no evidence to support any claim that the applicants' conduct unnecessarily protracted and thereby increased the cost of these proceedings.

[15] Having regard to *PBO Limited* (above) and all the circumstances, I am satisfied that costs of \$1,500 should be awarded in the Company's favour.

Determination

[16] The applicants', on a joint and several liability basis, are to pay as a contribution to the Company's fair and reasonable costs the sum of \$1,500 (one thousand five hundred dollars).

Denis Asher

Member of the Employment Relations Authority

